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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 95, and 97

[Docket No. FAA–2003–14698; Amendment Nos. 1–50; 71–32; 95–339; 97–1334]

RIN 2120–AH77

Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action adopts certain amendments proposed in Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments. Specifically, this action revises or adopts several definitions in FAA regulations, including Air Traffic Service routes, in part to be in concert with International Civil Aviation Organization (ICAO) definitions; reorganizes the structure of FAA regulations concerning the Designation of Class A, B, C, D, and E Airspace Areas; Airways; Routes; and Reporting Points, without changing the intent of the rule; and incorporates by reference two FAA Orders on Terminal Instrument Procedures (TERPS) and Flight Procedures and Airspace, into the Code of Federal Regulations. This action is intended to facilitate the development of RNAV routes that are not restricted to ground-based navigation references.

DATES: This final rule is effective on May 15, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 15, 2003. Comments on this action must be submitted on or before May 8, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14698 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result form this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2003–14698.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9-AWA-SBREFA@faa.gov.*

Background

On December 17, 2002, the FAA published Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments, (Docket No. FAA–2002–

14002; 67 FR 77326). In that notice, the FAA proposed to amend its regulations (14 CFR parts, 1, 71, 91, 95, 97, 121, 125, 129, and 135) to reflect technological advances that support RNAV operations; make certain terms consistent with those of the ICAO; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. The changes in Notice No. 02–20 were proposed to facilitate the transition from reliance on ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System. These amendments do not preclude the continued use of ground-based navigation systems. The comment period for Notice No. 02–20 closed on January 31, 2003. In response to the notice, the FAA received 21 comments.

A number of commenters requested that the FAA extend the comment period for up to 90 days to permit more in depth analyses of the proposal. Other comments received on this effort concerned the proposed amendments to communications and navigation equipment requirements, and instrument approach procedure terminology. These particular comments were substantive and reflected a significant interest in many areas of the proposed amendments. Also, several comments were received regarding the proposed amendments to air traffic service (ATS) routes terminology and criteria in part 1 and part 71. The FAA believes that many of these comments indicate that the commenters misunderstood the scope and intent of the proposed changes to part 1 and part 71.

For the reasons discussed below, the FAA is taking two separate actions: (1) Issuing a final rule, request for comments, on those matters dealing with the revision or adoption of several definitions in 14 CFR part 1, the reorganization of 14 CFR part 71, and the incorporation of FAA Order 8260.3 and FAA Order 8260.19 into the Code of Federal Regulations by reference; and (2) reopening the comment period for the proposed RNAV operations and equipment requirements. The reopening of the comment period for the proposed RNAV operations and equipment requirements is published separately in today's **Federal Register**.

Rationale for Separate Rule Action

This separate rulemaking effort will enable the FAA to proceed with the design and development phase of a high altitude RNAV route structure while providing an additional opportunity for public input. Operators of suitably-equipped aircraft will be able to realize some of the benefits of this High Altitude Redesign (HAR) project potentially as early as the summer of 2003. The HAR seeks to maximize the efficiency of the National Airspace System through the use of new technology and airspace concepts in the high altitude structure. The HAR will enable improved system efficiency by establishing high altitude RNAV routes for use by operators of suitably equipped aircraft. For example, establishing multiple routes in high density corridors where air traffic flows are currently served by a single jet route will lead to a reduction in ''miles-in-trail'' restrictions and alleviate ''choke points'' that lead to air traffic delays. In consideration of the increased traffic volume expected during the upcoming summer air travel season, the potential for increased air traffic delays, and the time required to promulgate airspace rulemaking actions to establish RNAV routes, the FAA believes that it is in the public interest to adopt these amendments in a separate final rule.

Many of the aircraft in the U.S. commercial fleet operating in the high altitude structure are already capable of utilizing the RNAV routes being implemented under the HAR. Experience from the implementation of RNAV procedures and routes in the terminal environment indicates significant time and fuel savings for participating carriers and demonstrates the potential of the HAR project.

The new RNAV routes will supplement, but not replace, the existing National Airspace System (NAS) route structure (*i.e.*, Federal airways and jet routes). The adoption of these amendments will facilitate the expanded use of RNAV systems for operators of suitably equipped aircraft. However, the adoption will not impose any new obligation on users to change from current ground-based navigation systems.

The FAA has determined that these amendments can be adopted separately without adverse impact on the continuing rulemaking process for the remaining proposed amendments in Notice No. 02–20. We have also determined that failure to proceed with a final rule now would further delay the savings that would be realized by a significant number of system users. The FAA recognizes that some members of the public may not have submitted comments on the relevant proposals because they requested an extension of the comment period. Therefore, the FAA is opening a 30-day comment period with this final rule.

In response to these particular proposals, the FAA received four comments regarding the amendments to parts 1 and 71 being adopted in this final rule. No comments were received regarding the amendments to §§ 95.1 and 97.20. These comments are further discussed below.

Analysis of Comments

Section 1.1 General Definitions

Comments were received regarding the definitions ''Air Traffic Service (ATS) route'' and ''Area navigation (RNAV).'' The Airline Dispatchers Federation wrote expressing general approval of the NPRM, but was concerned that the definition of an *Air Traffic Service route* does not ''concur'' with other regulatory requirements.

The FAA does not agree with this comment. This ICAO definition of Air Traffic Service route is being adopted simply as a general term to include all Federal airways, jet routes, and RNAV routes in the NAS. The definition states that an ATS route would be defined by route specifications that may include a route designator, the path to or from fixes, distance between fixes, reporting requirements, and the lowest safe altitude for the route. This is general information that is consistent with the information currently contained in various directives regarding the development and establishment of Federal airways and jet routes in the NAS.

Alaska Airlines questioned how ATS routes would be referred to in day-to-day communications and operations. The Aircraft Owners and Pilots Association (AOPA) expressed similar concerns, and stated that the FAA should use the term ''ATS route'' only in internal orders and procedures design guidance, citing the potential for confusion.

The FAA disagrees with these comments. As stated above, the term ''ATS route'' is a general term used to describe all types of routes designated in the NAS. The FAA does not foresee changing the identification of existing routes. The current prefixes ''J'' and ''V'' will continue to be used to describe jet routes and VOR Federal airways, respectively, in flight plans, ATC communications, and regulations. In addition, colored Federal airways will also continue to be described by the appropriate colors and prefixes (*e.g.*, Red Federal airways: R–1; Green Federal airways: G–1; etc.). Also, the FAA will add a new prefix, ''Q,'' to identify domestic RNAV routes that will be established as one outcome of this rule. The new routes will be established by

rule in the same manner as jet routes and victor airways. ICAO has allotted the ''Q'' prefix, and the number series 001 through 499, to the United States for this purpose (*e.g.*, Q–105). ATC communications and flight plans will refer to these routes by ''Q-prefix and number'' as is currently done for ''jet routes'' and ''victor airways.'' Further, the FAA plans to amend appropriate publications, such as the Aeronautical Information Manual (AIM), to reflect the changes adopted in this rule.

As part of their comments on the proposal, Continental Airlines requested that the proposed definition of *area navigation (RNAV)* be dropped, stating that more industry input is required.

The FAA does not agree with this request. The current definition in § 1.1 limits the use of RNAV to station-referenced navigation signals (*i.e.*, ground-based navigation aids) or within the limits of self-contained system capability. The new definition describes RNAV as a method of navigation that permits aircraft operations on any desired flight path. This broadened definition is intended to allow the expanded use of RNAV systems and allows the flexibility to take advantage of future changes in navigation technology. The FAA acknowledges that not all RNAV-capable aircraft are suitably equipped to operate on all RNAV routes. The FAA will determine the means to qualify aircraft for various RNAV operations and the method for promulgating the requirements to operate on RNAV routes. These requirements will be promulgated similarly to the way part 71 routes and part 97 procedures are currently promulgated. In addition, the modified definition of *area navigation (RNAV) route* stipulates that the routes are ATS routes that can be used by suitably equipped aircraft.

Section 71.11 Air Traffic Service (ATS) routes

In response to Notice No. 02–20, Continental Airlines and Alaska Airlines submitted comments on § 71.11. Continental Airlines requested that the proposed subparagraphs (a), (b), and (c) be deleted and § 71.11 be rewritten as follows: ''Unless otherwise specified, ATS routes include the protected airspace dimensions as determined acceptable by the Administrator.''

The FAA does not agree with Continental Airlines' comment. The revised § 71.11, as suggested by Continental Airlines, omits certain important information regarding route design that should be reflected in part 71. Subparagraphs (a), (b), and (c), as proposed in Notice No. 02–20, are based on information extracted from the existing § 71.75 ''Extent of Federal airways'' that is useful to the public. The new § 71.11 expands that information to include all ATS routes in addition to Federal airways. The new § 71.11(a) also differs from the existing § 71.75(a) by adding the word ''fix'' to define a route. This change provides for the use of RNAV waypoints to describe route segments. The new § 71.11(b) replaces the information contained in the existing § 71.75(b) regarding Federal airway route boundaries and protected airspace. Much of the information in § 71.75 is of a technical nature that the FAA believes should not be included in part 71. The new § 71.11(b) stipulates that the source of information regarding protected airspace dimensions for ATS routes is FAA Order 8260.3, United States Standard for Terminal Instrument Procedures (TERPS). Additionally, Order 8260.3 is incorporated by reference by the amendment of § 97.20 in this final rule. Criteria applicable to ATS routes is found in Order 8260.3, chapter 15, ''Area Navigation (RNAV),'' and chapter 17, ''Enroute Criteria.'' Future developments in navigation technology will be reflected in revised editions of Order 8260.3.

Further, § 71.11(c) states that an ATS route does not include the airspace of a prohibited area. A prohibited area is a type of special use airspace, designated under part 73, wherein no person may operate an aircraft without permission of the using agency. Waivers are not normally granted for routine *en route* aircraft operations to transit a prohibited area, therefore the FAA believes that it is important that this paragraph remain a part of this section.

In their comment, Alaska Airlines believes that the new § 71.11 does not address assigning a required navigation performance (RNP) value to ATS routes. Alaska Airlines stated that the advent of RNP may make current route dimensions and protected airspace criteria obsolete and that this should be examined.

The FAA intentionally did not address RNP in this rulemaking action due to the ongoing development of RNP standards and procedures in the United States. Referencing FAA Order 8260.3 as the source of route criteria, and removing more specific criteria from this section, will preclude the need for further amendments to part 71 once RNP values and procedures are finalized. We believe that this rule will not adversely affect the future implementation of RNP in the NAS.

Section 71.13 Classification of Air Traffic Service (ATS) Routes.

In their comment, Continental Airlines requested that § 71.13(b) be rewritten to delete the specific references to VOR Federal airways and colored Federal airways. They recommended that the section should refer to (1) Federal airways, and (2) RNAV routes.

The FAA does not agree with this recommended change. In the current § 71.73, Classification of Federal airways, states that Federal airways consist of VOR Federal airways and colored Federal airways, and lists the specific types of colored Federal airways (*i.e.*, Green, Amber, Red, and Blue). The new § 71.13(b) simply lists the types of airways and routes that are designated in subpart E of this part. Currently, 43 designated colored Federal airways, and more than 600 VOR Federal airways, remain in the NAS. The FAA believes that removing the references to VOR and colored airways as requested by the commenter would cause confusion about the status of these routes. Currently, there is no plan to eliminate these types of Federal airways and they will remain a part of the NAS. Additionally, these airways are not impacted by this rulemaking action.

AOPA further commented that the rule should not adversely impact the majority of general aviation operations that are not equipped with IFR GPS equipment.

We agree with this comment and thus emphasize that this rule is intended to facilitate the expanded use of RNAV and GPS navigation, and not intended to curtail navigation based on the Federal airway or jet route structures.

AOPA also stated their expectations that the following changes should occur concurrently with the publication of this final rule: A reduction of the minimum *en route* altitude on Victor airways when using GPS; increased access to Class B airspace by establishing RNAV routes through the area; increased access to special use airspace by publishing routes independent of NAVAID citing; and enable RNAV access to geographic areas where failing navigation infrastructure prevents IFR access to certain airports.

These specific comments are outside the scope of Notice No. 02–20.The FAA points out that separate efforts are already underway to address these concerns and that this rule will facilitate progress in those areas.

No comments were received regarding §§ 95.1 and 97.20.

The Rule

This rule adopts the following amendments proposed in Notice No. 02–20:

Part 1—Definitions and Abbreviations

In § 1.1 General definitions, this action adds the terms *Air Traffic Service (ATS) route and Area navigation (RNAV) route,* and amends the terms *Area navigation (RNAV)* and *Route segment.* These changes adopt the ICAO term ''Air Traffic Service (ATS) route'' as a general term that includes Federal airways, jet routes, and RNAV routes, and to facilitate the use of RNAV that is not dependent on ground-based navigation systems.

Part 71—Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points

The FAA is adopting, in full, the part 71 amendments, with minor edits to the title of this part, as proposed in Notice No. 02–20. These changes incorporate the term ''Air Traffic Service (ATS) route;'' facilitate the development of ATS routes that are not dependent upon ground-based navigation systems; remove extraneous information from part 71; and restructure the sections in part 71 to more clearly organize the information and improve readability.

Part 95—IFR Altitudes

The FAA is adopting, in full, the part 95 amendments. These changes increase the flexibility of the rule to accommodate the use of other-than-ground-based navigation systems. However, these amendments do not preclude the continued use of ground-based navigation systems.

Part 97—Standard Instrument Approach Procedures

In Notice No. 02–20, the FAA proposed various amendments to the heading of part 97, and to §§ 97.1, 97.3, 97.5, 97.10, and 97.20. This rule, however, adopts only the amendment to § 97.20 General. Section 97.20 is amended to incorporate FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPS),'' and FAA Order 8260.19, ''Flight Procedures and Airspace,'' into the Code of Federal Regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this rulemaking indicates that its cost impact is minimal because the rule merely revises or adds definitions, incorporates by reference two orders concerning TERPS and Flight Procedures and Airspace, and enables the use of advanced RNAV navigation routes that the FAA has been developing. These routes are typically more direct, and therefore, shorter than the current Federal Airways and jet routes and in following these advanced RNAV routes aircraft may require less fuel and time to reach their destinations. Because the costs and benefits of this action do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a full ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the cost impact of a rule is minimal. We will prepare a full regulatory evaluation for the separate final rule concerning RNAV operations and equipment requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as they are defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This final rule merely revises or adds definitions, incorporates by reference two orders concerning TERPS and Flight Procedures and Airspace, and enables the use of advanced RNAV navigation routes that the FAA has been developing. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same minimal costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandate Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Weather.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

■ 2. Amend § 1.1 as follows:
■ a. Remove the definitions of Area navigation high route, Area navigation low route, and RNAV way point.
■ b. Add definitions for Air Traffic Service (ATS) route and Area navigation (RNAV) route in alphabetical order to read as set forth below.
■ c. Revise the definitions of Area navigation (RNAV), and Route segment to read as set forth below.

§ 1.1 General definitions.

* * * * *

Air Traffic Service (ATS) route is a specified route designated for channeling the flow of traffic as necessary for the provision of air traffic services. The term ''ATS route'' refers to a variety of airways, including jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route is defined by route specifications, which may include:

(1) An ATS route designator;

(2) The path to or from significant points;

(3) Distance between significant points;

(4) Reporting requirements; and

(5) The lowest safe altitude determined by the appropriate authority.

* * * * *

Area navigation (RNAV) is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route is an ATS route based on RNAV that can be used by suitably equipped aircraft.

* * * * *

Route segment is a portion of a route bounded on each end by a fix or navigation aid (NAVAID).

* * * * *

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 3. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 4. Revise the heading of part 71 to read as set forth above.

Subpart A—Class A Airspace

■ 5. Transfer the heading ''Subpart A—General; Class A Airspace'' from where it appears preceding § 71.1 to preceding § 71.31 and revise it to read as set forth above.

■ 6. Add § 71.11 to read as follows:

§ 71.11 Air Traffic Service (ATS) routes.

Unless otherwise specified, the following apply:

(a) An Air Traffic Service (ATS) route is based on a centerline that extends from one navigation aid, fix, or intersection, to another navigation aid, fix, or intersection (or through several navigation aids, fixes, or intersections) specified for that route.

(b) ATS routes include the primary protected airspace dimensions defined in FAA Order 8260.3, ''United States Standard For Terminal Instrument Procedures (TERPS).'' Order 8260.3 is incorporated by reference in § 97.20 of this chapter.

(c) An ATS route does not include the airspace of a prohibited area.

■ 7. Add § 71.13 to read as follows:

§ 71.13 Classification of Air Traffic Service (ATS) routes.

Unless otherwise specified, ATS routes are classified as follows:

(a) In subpart A of this part:

(1) Jet routes.

(2) Area navigation (RNAV) routes.

(b) In subpart E of this part:

(1) VOR Federal airways.

(2) Colored Federal airways.

(i) Green Federal airways.

(ii) Amber Federal airways.

(iii) Red Federal airways.

(iv) Blue Federal airways.

(3) Area navigation (RNAV) routes.

■ 8. Add § 71.15 to read as follows:

§ 71.15 Designation of jet routes and VOR Federal airways.

Unless otherwise specified, the place names appearing in the descriptions of airspace areas designated as jet routes in subpart A of FAA Order 7400.9, and as VOR Federal airways in subpart E of FAA Order 7400.9, are the names of VOR or VORTAC navigation aids. FAA Order 7400.9 is incorporated by reference in § 71.1.

§ 71.73 [Removed]

■ 9. Remove § 71.73.

§ 71.75 [Removed]

■ 10. Remove § 71.75.

§ 71.77 [Removed]

■ 11. Remove § 71.77.

§ 71.79 [Removed]

■ 12. Remove § 71.79.

PART 95—IFR ALTITUDES

■ 13. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49(b)(2).

■ 14. Revise § 95.1 to read as follows:

§ 95.1 Applicability.

(a) This part prescribes altitudes governing the operation of aircraft under IFR on ATS routes, or other direct routes for which an MEA is designated in this part. In addition, it designates mountainous areas and changeover points.

(b) The MAA is the highest altitude on an ATS route, or other direct route for which an MEA is designated, at which adequate reception of VOR signals is assured.

(c) The MCA applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

(d) The MEA is the minimum en route IFR altitude on an ATS route, ATS route

segment, or other direct route. The MEA applies to the entire width of the ATS route, ATS route segment, or other direct route between fixes defining that route. Unless otherwise specified, an MEA prescribed for an off airway route or route segment applies to the airspace 4 nautical miles on each side of a direct course between the navigation fixes defining that route or route segment.

(e) The MOCA assures obstruction clearance on an ATS route, ATS route segment, or other direct route, and adequate reception of VOR navigation signals within 22 nautical miles of a VOR station used to define the route.

(f) The MRA applies to the operation of an aircraft over an intersection defined by ground-based navigation aids. The MRA is the lowest altitude at which the intersection can be determined using the ground-based navigation aids.

(g) The changeover point (COP) applies to operation of an aircraft along a Federal airway, jet route, or other direct route; for which an MEA is designated in this part. It is the point for transfer of the airborne navigation reference from the ground-based navigation aid behind the aircraft to the next appropriate ground-based navigation aid to ensure continuous reception of signals.

PART 97—STANDARD INSTRUMENT PROCEDURES

■ 15. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

■ 16. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument procedures based on the criteria contained in FAA Order 8260.3B, ''U.S. Standard for Terminal Instrument Procedures (TERPS) (July 7, 1976) and FAA Order 8260.19C, ''Flight Procedures and Airspace'' (September 16, 1993). These standard instrument procedures and FAA Orders were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the following locations:

(1) FAA Orders 8260.3 and 8260.19 may be examined at the Federal Aviation Administration, Flight Standards Service, Flight Technologies and Procedures Division (AFS–420), 6500 S. MacArthur Blvd., Oklahoma City, OK, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These Orders are available for purchase from the U.S. Government Printing Office, 710 N. Capitol Street, NW., Washington, DC 20401.

(2) Standard instrument procedures may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) Standard instrument procedures and associated supporting data are documented on specific forms under FAA Order 8260.19C (September 16, 1993) and are promulgated by the FAA through the National Flight Data Center (NFDC) as the source for aeronautical charts and avionics databases. These procedures are then portrayed on aeronautical charts and included in avionics databases prepared by the National Aeronautical Charting Office (AVN–500) and other publishers of aeronautical data for use by pilots using the NFDC source data. The terminal aeronautical charts published by the U.S. Government were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These charts are available for purchase from the FAA National Aeronautical Charting Office, Distribution Division AVN–530, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

Issued in Washington, DC on March 28, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–8286 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–02–AD; Amendment 39–13106; AD 2003–07–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent the inability to operate the switch, which could result in failure to activate the related operational system. Such failure could adversely affect the operation and control of the airplane.

DATES: This AD becomes effective on May 12, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 12, 2003.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that certain push switch cap spigots on the electrical power management overhead panel have failed to activate their related operational system when engaged. The plastic these push switch cap spigots are made of is not strong enough and causes the switch cap spigots to break when engaged. The defective switch caps have the caption

of ON, OPEN, or have no caption or symbol located on the electrical power management overhead panel, part number 972.81.32.102, that has not been modified to Mod A status.

The FOCA has reported the following three incidents in which the switch failed to activate its related operational system when engaged:

—Inability to switch the probe heating on;

—Inability to open the Inertial Separator; and

—Inability to switch the Taxi Light on.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in failure to activate certain operational systems. Such failure could result in adverse operation and control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 7, 2003 (68 FR 6376). The NPRM proposed to require you to replace certain push switch caps on the electrical power management overhead panel with parts of improved design.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 45 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	The manufacturer will provide replacement parts free of charge.	$180	$180 × 45 = $8,100

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–07–10 Pilatus Aircraft Ltd.: Amendment 39–13106; Docket No. 2003-CE–02-AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 321, 401 through 457, and 463 that:

(1) Have an overhead panel, part number (P/N) 972.81.32.102 (or FAA-approved equivalent part number), installed that has not been modified to Mod A status; and

(2) Are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the inability to activate certain operational systems. Such failure could adversely affect the operation and control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Replace all switch caps that have a caption of ON, OPEN, and ones with no caption or symbol on them.	Within the next 100 hours time-in-service after May 12, 2003 (the effective date of this AD).	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

Actions	Compliance	Procedures
(2) Using a permanent marker, mark MOD Status A on the overhead panel identification label.	Prior to further flight after completing the actions required in paragraph (d)(1) of this AD.	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.
(3) Do not install an overhead panel, P/N 972.81.32.102, unless it has been modified to Mod A status.	As of May 12, 2003 (the effective date of the AD).	In accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC12 Service Bulletin No. 31–003, dated September 27, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note: The subject of this AD is addressed in Swiss AD Number HB 2002–659, dated November 30, 2002.

(g) *When does this amendment become effective?* This amendment becomes effective on May 12, 2003.

Issued in Kansas City, Missouri, on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8198 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Topeka, Philip Billard Municipal Airport, KS.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 10, 2003 (66 FR 6606). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8567 Filed 4–07–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14428; Airspace Docket No. 03–ACE–8]

Amendment to Class E Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Ankeny, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7913). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8566 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 03–ACE–6]

Amendment to Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Lebanon, MO.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7914). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8569 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14427; Airspace Docket No. 03–ACE–7]

Amendment to Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective day of the final rule which revises Class E airspace at Ames, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 2003 (68 FR 7915). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8570 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14459; Airspace Docket No. 03–ACE–12]

Modification of Class E Airspace; Clarinda, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Clarinda, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8706). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8565 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14458; Airspace Docket No. 03–ACE–11]

Modification of Class E Airspace; Larned, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Larned, KS.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8703). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8564 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14457; Airspace Docket No. 03–ACE–10]

Modification of Class E Airspace; Herington, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Herington, KS

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8704). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8563 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14429; Airspace Docket No. 03–ACE–9]

Modification of Class E Airspace; Cherokee, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Cherokee, IA.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 25, 2003 (68 FR 8705). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 15, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8571 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I

46 CFR Chapters I and III

49 CFR Chapter IV

[USCG–2003–14505]

Coast Guard Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of February 28, 2003, a document concerning technical changes to various parts of titles 33 (Navigation and Navigable Waters), 46 (Shipping), and 49 (Cargo containers) of the Code of Federal Regulations. Inadvertently, four technical changes to revise chapter headings were omitted. This document adds those four changes.

DATES: Effective on March 1, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call James McLeod, Project Manager, Office of Regulations and Administrative Law (G–LRA), Coast Guard, at 202–267–6233. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** of February 28, 2003, (68 FR 9533) making technical changes to various parts of titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations. We changed ''Department of Transportation'' to the ''Department of Homeland Security'' in specified sections in 33 CFR Chapter I and 46 CFR Chapter I. Inadvertently, four technical changes revising Chapter headings in Titles 33, 46, and 49 of the Code of Federal Regulations were omitted. This document adds those changes.

■ (1) In rule FR Doc. 03–4763 published on February 28, 2003, (68 FR 9533) make the following corrections. On page 9534, in the second column, change the number of amendatory instruction ''1'' to ''1a'', add the words ''COAST GUARD, DEPARTMENT OF HOMELAND SECURITY'' to the heading for 33 CFR Chapter I and add a new amendatory instruction 1 to read:

■ 1. The title 33, chapter I heading is revised to read as set forth above.

■ (2) On page 9535, in the second column, add the words ''COAST GUARD, DEPARTMENT OF HOMELAND SECURITY'' to the heading for 46 CFR Chapter I and add a new amendatory instruction 26a to read:

■ 26a. The title 46, chapter I heading is revised to read as set forth above.

■ (3) On page 9535, in the third column immediately following amendatory instruction 30, add the heading ''46 CFR Chapter III—COAST GUARD (Great Lakes Pilotage), DEPARTMENT OF HOMELAND SECURITY'' and add a new amendatory instruction 31 to read:

■ 31. The title 46, chapter III heading is revised to read as set forth above.

■ (4) On page 9535, in the third column immediately following amendatory instruction 31, add the heading ''49 CFR Chapter IV—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY'' and add a new amendatory instruction 32 to read:

■ 32. The title 49, chapter IV heading is revised to read as set forth above.

Dated: March 25, 2003.

Robert F. Duncan,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 03–8284 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–020]

RIN 1625–AA09

Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Norfolk Southern Railroad Bridge across the Nanticoke River, mile 39.4, in Seaford, Delaware. The final rule will increase bridge openings by extending the daytime hours of operation and reducing the required signal time for opening the draw. The change will reduce delays for navigation by allowing more draw openings.

DATES: This rule is effective May 8, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as available in the docket, are part of docket CGD05–02–020 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 6, 2002, a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Nanticoke River, Seaford, Delaware'' was published in the **Federal Register** (67 FR 50844). No comments on the proposed rule were received. No public hearing was requested, nor held.

Background and Purpose

The Nanticoke River Bridge is owned and operated by Norfolk Southern Railroad. The regulation in 33 CFR 117.243 requires the railroad bridge over the Nanticoke River, mile 39.4, in Seaford, Delaware to open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. and need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

The bridge connects The Town of Blades and Seaford. This bridge is one of two railways supplying the southern Delmarva Peninsula. Mariners do not have an alternate route. The Town of Blades requested permission to increase the number of hours the bridge will be open to marine traffic due to the increased navigation on the waterway. The Town of Blades asserted that the present regulation for this bridge is too restrictive for the increased number of mariners. Blades Economic Development Commission (BEDCO) has built an 87-slip marina in the Town of Blades, upstream from the bridge. The marina is now open, and the drawbridge needs to be opened more frequently to accommodate the increased flow of maritime traffic in this area. As the flow of vessel traffic increases, the current operating schedule of the bridge may cause vessel back-ups and potential hazardous impacts on navigation. The Town of Blades also asserts that this economic development project will draw more than the 87 mariners already projected for the marina.

The Town of Blades requested permission to increase the number of hours the bridge will be open to water

craft to avoid excessive/hazardous vessel back-ups at the bridge. Norfolk Southern Railway and local mariners developed an inter-modal compromise. The plan allows for an extended amount of time that the draw will be open, while not excessively limiting the rail traffic. This compromise will help to decrease the back-up of mariners at the bridge and thus avoid potentially hazardous/dangerous situations. The aforementioned indicates that it would be advantageous to change the drawbridge operating regulations. The Coast Guard believes that this rule change is needed and will expedite and not overburden marine traffic.

Due to the fact that the final rule will increase time/openings, all of which the bridge owner has agreed to, we anticipate only positive impacts on the boating community.

This final rule will revise 33 CFR 117.243, which regulates the scheduled openings of the Norfolk Southern Railroad Bridge across the Nanticoke River at mile 39.4.

Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

Regulatory Evaluation

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979).

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that these changes will not impede but enhance maritime traffic transiting the bridge, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the regulation removes current restrictions on navigation by allowing for an increased number of draw openings. In addition, maritime advisories will be widely available to users of the river about all proposed regulations and any potential impacts to navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rulemaking we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and could either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); § 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.243 is revised to read as follows:

§ 117.243 Nanticoke River.

The draw of the Norfolk Southern Railway Bridge across the Nanticoke River, at mile 39.4, at Seaford, Delaware will operate as follows:

(a) From March 15 through November 15 the draw will open on signal for all vessels except that, from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(b) At all times from November 16 through March 14 the draw will open on signal if at least 2½ hours notice is given.

(c) When notice is required, the owner operator of the vessel must provide the bridge tender with an estimated time of passage by calling 717–541–2151/2140.

Dated: March 31, 2003.

James D. Hull,

Vice Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–8525 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–017]

RIN 1625–AA11

Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is amending a Regulated Navigation Area (RNA) to add restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull during U.S. Army Corps of Engineers dredging operations in that area. This action is necessary to provide for the safety of life and property on navigable waters during dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: This rule is effective from March 30, 2003 to September 30, 2004. Comments and related material must reach the Coast Guard on or before June 9, 2003.

ADDRESSES: The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–017 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material to the Coast Guard at the address under **ADDRESSES.** If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Coast Guard, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The U.S. Army Corps of Engineers is conducting an extensive navigation improvement project in Kill Van Kull and Newark Bay, New York and New Jersey. The project, which is being conducted in nine distinct phases, began in April 1999 and will continue through approximately April 2005. In anticipation of the project and its probable impact on navigation, the Coast Guard worked with local pilots and maritime users to develop restrictions on vessels transiting the area during dredging operations. As a result of that cooperative process, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 72219) on December 31, 1998, discussing our intention to establish a Regulated Navigation Area (RNA) for Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey. We received no letters commenting on the proposed rule. No public hearing was requested and none was held. On April 15, 1999, we published a Final Rule in the **Federal Register** (64 FR 18577) codifying the RNA at 33 CFR 165.165.

Once dredging operations began in the Bergen Point portion of the navigation improvement project, it has become evident that the provisions of the original RNA were insufficient to ensure safe navigation on that portion of the waterway. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) had to be relocated to facilitate dredging of the Kill Van Kull. Once those buoys were relocated, the Bergen Point Buoy was hit and moved off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey to re-establish the buoy on-station. More importantly, other vessels were unable to navigate successfully within the temporary channel boundaries. More than half of the vessels over 700 feet long transiting the area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. And there were several near collisions between tugs and barges operating in the area. We determined that a significant risk of similar mishaps existed unless additional regulations were prescribed for vessels operating in the vicinity of Bergen Point while continued dredging

operations impinged upon the navigable portion of the channel.

In light of the foregoing, immediate action was required to establish additional regulations for vessels operating in the vicinity of Bergen Point while U.S. Army Corps of Engineers dredging operations continued. On June 25, 2002, we published a temporary final rule (TFR) in the **Federal Register** (67 FR 42723) establishing additional restrictions on vessels transiting the Bergen Point West Reach of the Kill Van Kull. Those restrictions were only expected to be effective until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet.

Due to the recent extension of the Army Corps of Engineers' dredging project, it is necessary to continue enforcement of the provisions currently codified in 33 CFR 165.165(d)(10). This TFR will essentially re-institute those operating requirements from the expiration of the current TFR through the expected completion of the project. These circumstances provide good cause for not publishing an NPRM. Similarly, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to restrict commercial vessel transits in the waterway and protect the maritime public from the hazards associated with changing vessel traffic patterns during this dredging project.

Background and Purpose

The United States Army Corps of Engineers and the Port Authority of New York/New Jersey commenced an extensive channel-dredging project in the Kill Van Kull in April 1999. On May 16, 2002, Kill Van Kull Channel Lighted Buoys 10 and 12 (LLNR 37300 and 37310) and Bergen Point Lighted Buoy 14 (LLNR 37325) were relocated to facilitate dredging of the Bergen Point West Reach of the Kill Van Kull. Since these buoys were relocated, one vessel collided with the Bergen Point Buoy and moved it off-station requiring Coast Guard assets to be diverted from other safety and security missions in the Port of New York and New Jersey while re-establishing the buoy on its assigned location. More than half of the vessels over 700 feet long transiting this area were unable to safely navigate the narrow southern channel during periods of high current and moderate winds. Instead, they had to depart from the temporary boundaries of the channel and proceed through a portion of the closed area north of the Kill Van Kull Lighted Buoy 10. There were also several near collisions between tugs and barges in this area.

In order to protect life, property and the marine environment, the Coast Guard established the following additional requirements for commercial vessels transiting Bergen Point West Reach of the Kill Van Kull (Work Areas (4) and (5) of the dredging project):

Tug Requirements. All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

Tidal Current Restrictions. Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water (as measured from the Bergen Point current station).

Astern Tows. Hawser tows are not permitted unless an assist tug accompanies the tow.

Sustained winds from 20 to 34 knots. In sustained winds from 20 to 34 knots: (A) Cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) Tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

Sustained winds greater than 34 knots. In sustained winds greater than 34 knots, vessels 300 gross tons or greater, and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Nearly identical restrictions had been imposed during a previous dredging project conducted in the same area from 1991 to 1992. Those regulations were instituted after three groundings, which resulted in one oil spill and one channel blockage. In anticipation of the current dredging project, the Coast Guard worked closely with local pilots and commercial waterway users to devise a system of regulations that would reduce the likelihood of similar mishaps from recurring. After extensive consultation, computer simulations and other analysis, we concluded that the regulations codified at 33 CFR 165.165 would adequately protect the interests of safe navigation in the vicinity of Bergen Point during the U.S. Army Corps of Engineers' navigation improvement project. As previously discussed, actual experience with those regulations demonstrated the need for additional restrictions on commercial vessels operating in that area. Vessel Traffic Service New York met with Pilots and Tug companies operating in the port to explain the need for these restrictions. Additional restriction for navigation in the vicinity of Bergen Reach were developed. On June 25, 2002, we published a ''Temporary final rule; request for comments'' in the **Federal Register** (67 FR 42723), which codified those requirements as 33 CFR 165.165(d)(10). No comments were received, and the TFR provisions proved to be effective in preserving the interests of safe navigation in the vicinity of the Bergen Reach.

We had anticipated that those restrictions would only be necessary until March 30, 2003. During the week of February 3, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that dredging in this section was behind schedule and would not be completed for approximately 12 to 18 months. During the week of February 10, 2003, the U.S. Army Corps of Engineers notified the Coast Guard that the approved dredged depth of the Kill Van Kull had been increased to 50 feet from 45 feet. Due to these extensions in the dredging project, the Coast Guard is enacting this TFR to maintain requirements identical to those currently codified at 33 CFR 165.165(d)(10) through September 30, 2004.

Discussion of Temporary Rule

This rule essentially extends the provisions currently codified at 33 CFR 165.165(d)(10) by re-instituting identical requirements once that TFR expires. This TFR is necessary because the Army Corps of Engineers has extended its dredging project in the Kill Van Kull for approximately 18 months and expanded the scope of the project to dredge an additional five feet from the channel.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full

Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that the overwhelming majority of vessels transiting through the Bergen Point portion of the Kill Van Kull that would be required by this regulation to utilize tug assistance would most likely employ that service as a matter of prudence even in the absence of a regulation; only those vessels that would not observe that ''best practice'' will be affected; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; identical regulations have been in effect since June 25, 2002 without undue burden on waterway users; under current practice, we have had six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established; moreover, each of the provisions of this rule could be imposed upon individual vessels transiting through Bergen Point under the existing authority of the Vessel Traffic Services New York.

Advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information and electronic mail broadcasts, at New York Harbor Operations Committee meetings, and on the Internet at *http://www.harborops.com.*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit Bergen Point West Reach of the Kill Van Kull. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: Kill Van Kull accommodates approximately 26,000 vessel transits annually; the overwhelming majority of vessels that would be required to utilize tug assistance while transiting the Bergen Point portion of the Kill Van Kull would employ that service as a matter of prudence even in the absence of a regulation; only the small percentage of vessels not observing this ''best practice'' will be affected by this regulation; moreover, we know of no specific small entities among that small number; all interested stakeholders have been informed of these restrictions at Harbor Operations Committee meetings and are given the opportunity to comment on revisions that may be necessary; the restrictions imposed by this rule are identical to those that have been enforced since June 25, 2002 and which have not been unduly burdensome on waterway users; we currently have six positions available during each tidal current window for vessels over 700 feet long to transit, an average of two vessels transit during these transit windows, and no vessel has been required to wait for the next transit window since these regulations were originally established.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander F. Fiumano, Vessel Traffic Service, Coast Guard Activities New York at (718) 354–4191.

Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it revises a Regulated Navigation Area. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.** 165 as follows:

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, in Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From March 30, 2003 to September 30, amend § 165.165 to add paragraph (d)(10) to read as follows:

§ 165.165 Regulated Navigation Area; Kill Van Kull Channel, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, Port Newark Channel and New Jersey Pierhead Channel, New York and New Jersey.

* * * * *

(d) * * *

(10) *Bergen Point West Reach.* In addition to the requirements in paragraphs (d)(1) through (d)(9) of this section, the following provisions apply to vessels transiting in or through Work Areas (4) and (5):

(i) *Tug requirements:* All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require three assist tugs.

(ii) *Tidal current restrictions:* Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

(iii) *Astern tows:* Hawser tows are not permitted unless an assist tug accompanies the tow.

(iv) *Sustained winds from 20 to 34 knots.* In sustained winds from 20 to 34 knots:

(A) cargo ships and tankers in ballast may not transit Work Areas (4) and (5);

(B) tugs pushing or towing alongside tank barges 350 feet in length, or greater, in light condition, require an assist tug in Work Areas (4) and (5).

(v) *Sustained winds greater than 34 knots.* In sustained winds greater than 34 knots, vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting Work Areas (4) and (5).

Dated: March 28, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–8526 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2002–5B]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office's interim rule governing the form, content, and manner of service of notices of termination of transfers and licenses granted by authors on or after 1978 is being adopted as a final rule with one change. Beginning on January 1, 2003, copyright owners have been able to serve notices of termination on certain copyright transferees and licensees under an interim rule effective on that date. The Office is now adopting an additional amendment that was set forth in the proposed rule published in the **Federal Register** on December 20, 2002.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202)707–8380. Fax: (202)707–8366.

SUPPLEMENTARY INFORMATION: Section 203 of the Copyright Act, 17 U.S.C. 203, provides that under certain circumstances, authors may terminate grants of transfers or licenses of copyright entered into after January 1, 1978. Such terminations may be made during a five-year period commencing 35 years after the execution of the grant or, if the grant included the right of publication, the earlier of 35 years after publication pursuant to the grant or 40 years after the execution of the grant. January 1, 2003, was the first date on which a termination could be made pursuant to section 203. In order to have regulations in place by January 1, the Copyright Office published an interim rule on December 23, 2002. 67 FR 78176.

On December 20, 2002, the Copyright Office published a notice of proposed rulemaking governing termination of transfers and licenses pursuant to section 203 of the Copyright Act. Notice of Proposed Rulemaking, Notice of Termination, 67 FR 77951. The Office proposed to amend 37 CFR 201.10, the existing regulation governing notices of termination under section 304 of the Copyright Act, 17 U.S.C. 304, by adding provisions relating to terminations under section 203.

On December 23, 2002, the Office published an interim rule, effective January 1, 2003, which differs from the proposed rule in only one respect. The proposed rule amended § 201.10(b)(1)(i) of the Copyright Office regulations to require that a notice of termination pursuant to section 17 U.S.C. 304 must identify whether the termination is made under section 304(c) or section 304(d). Because this proposed amendment would change established practice with respect to terminations under section 304(c), and because the

Office did not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice, that proposed amendment was not included in the interim rule. It is included in this final rule.

The comment period for the notice of proposed rulemaking has closed and the Office has received no comments. For that reason, and for the reasons outlined in the Notice of Proposed Rulemaking, the Office has decided to adopt, as a final rule, the December 23 Interim Rule, with the change proposed on December 20.

The entire text of § 201.10, as amended, may be found on the Copyright Office Web site at *http://www.copyright.gov/docs/203.html.*

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

■ In consideration of the foregoing, the Copyright Office adopts the interim rule published on December 23, 2002 (67 FR 78176) as final, with the following change:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.10 is amended in paragraph (b)(1)(i), by removing ''If the termination is made under section 304(d), a statement to that effect;'' and adding, in its place, ''Whether the termination is made under section 304(c) or under section 304(d);''.

Dated: March 25, 2003.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 03–8540 Filed 4–7–03; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216a; A–1–FRL–74662]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to 310 CMR 7.06, Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. On August 9, 2001, the Massachusetts Department of Environmental Protection (MA DEP) formally submitted a SIP revision containing multiple revisions to the State Regulations for the Control of Air Pollution. In today's action EPA is conditionally approving one portion of these rule revisions, 310 CMR 7.06 (1)(c), into the Massachusetts SIP. This conditional approval is based on a commitment by MA DEP to submit a revised regulation by one year from today. If Massachusetts fails to submit the required revisions within one year, then this final conditional approval will be converted to a disapproval. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective June 9, 2003, unless EPA receives adverse comments by May 8, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2001, the MA DEP submitted a formal revision to the State Implementation Plan (SIP). This SIP revision consists of amendments to several sections of the Massachusetts Regulations for the Control of Air Pollution. Today's action conditional approves one section of this submittal, 310 CMR 7.06(1)(c) of the Massachusetts ''Visible Emissions'' regulation.

A. What Are Visible Emissions?

Visible emissions, also known as ''opacity,'' is a measure of the density of smoke being emitted from a particular source. The more dense and dark the emissions from a source appear, the higher the opacity. in general, higher opacity is equivalent to higher emissions of particulate matter. States have developed and implemented rules for certain sources of particulate matter designed to measure and control the level of opacity emitted from smokestack or vents, thereby controlling the amount of particular matter released into the ambient air.

B. What Does the Current Visible Emissions Rule in Massachusetts Require?

Massachusetts rule section 310 CMR 7.06 provides specific requirements for visible emissions. Section 310 CMR 7.06(1) of the existing visible emissions rule applies to stationary sources other than incinerators. Section 310 CMR 7.06(1)(a) states that ''no person shall cause, suffer, allow, or permit the emissions of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the [Ringleman] chart for a period, or aggregate period of time in excess of six minutes during any one hour period, provided that at no time during the said six minutes the shade, density, or appearance be equal to or greater than No. 2 of the [Ringleman] chart.'' Furthermore, section 310 CMR 7.06(1)(b) goes on to state that ''No person shall cause, suffer, allow, or permit the operation of a facility so as to emit contaminant(s), exclusive of uncombined water or smoke subject to 310 CMR 7.06(1)(a) of such opacity which, in the opinion of the Department, could be reasonably controlled through the application of modern technology of control and a good Standard Operating Procedure, and in no case, shall exceed 20% opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall the opacity exceed 40%.''

C. What Amendments Did Massachusetts Submit to Their Visible Emissions Rule?

On August 9, 2001, the MA DEP submitted to EPA amendments to the Massachusetts Regulations for the Control of Air Pollution. This submittal included revisions to several regulatory sections. However, today's action only applies to the revisions made to section 310 CMR 7.06, entitled ''Visible Emissions.'' The revisions of this section will allow a facility subject to a Title V operating permit to operate under alternative opacity emission standards for certain boilers, provided the facility develops a plan outlining the practices it will utilize during certain operating conditions (*e.g.,* start up, shut down, *etc.*).

Specifically, a new section 310 CMR 7.06(1)(c) allows facilities subject to Title V operating permits to comply with a visible emissions limitation not to exceed 15 percent opacity for boilers rated less than 500 BTU input capacity. To operate in accordance with the exception, a facility must notify the MA DEP and submit a plan describing practices for operating and maintaining the equipment to minimize emissions during soot blowing, startup, shut down, burner change, and malfunction. In addition, the plan must also include corrective action procedures. An exceedance of the visible emission limitation would not be deemed a violation provided the facility could demonstrate that it was operating in accordance with the plan at the time of the exceedance. In addition, MA DEP can disallow a facility from operating pursuant to this exception if the plan is inadequate or a condition of air pollution exists. Finally, any facility operating pursuant to this exception must notify the MA DEP within 24 hours or the next business day of any malfunction which causes an exceedance of the allowed visible emissions requirements for greater than a 12 minute period.

D. What Concerns Does EPA Have With the Existing Amendments?

EPA has concluded that 310 CMR 7.06 (1)(c) contains several deficiencies that must be addressed by the MA DEP. First, there is no apparent cap on opacity during start up and shut down operations. In addition, the revised rule does not explicitly provide an averaging period by over which opacity should be measured. Furthermore, there is no explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the exception in 310 CMR 7.06(c). Lastly, there are no provisions to make the good operating practices outlined in a facility's plan enforceable. If the operating practices are not made enforceable, then neither EPA nor citizens will be able to enforce against a facility violating its opacity limitation.

E. What Changes Has Massachusetts Committed To Make to the Rule?

In a letter from the MA DEP dated September 12, 2002, MA DEP has committed to submit, within one year from today, revisions to section 7.06 (1)(c). In its September 12, 2002 letter, MA DEP included to specific regulatory language that it intends to adopt to address EPA concerns. The amendments the MA DEP has committed to make to the rule include adding a 27% opacity limitation to apply during startup, shut down, soot blowing and other limited periods as specified in the plan of good operating practices approved by the MA DEP. MA DEP has also committed to explicitly include a six minute averaging period in the rule.

Massachusetts has also committed to add explicit criteria in the regulation stating how the MA DEP will judge the plan of good operating practices required to be submitted by facilities taking advantage of the alternative opacity limitation. Lastly, Massachusetts has also committed to add provisions to the rule specifying how the good operating practices and visible emission limitations outlined in a facility's plan will be made enforceable. These will address all of the concerns raised by EPA.

II. Final Action

EPA is conditionally approving 310 CMR 7.06(1)(c) of the SIP revision submitted by the Massachusetts Department of Environmental Protection on August 9, 2001 as a revision to the SIP. The State must submit to EPA by one year from today a revised regulation addressing the concerns outlined in this action. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this regulation will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable time frame, the conditionally approved regulation will remain a part of the SIP until EPA takes final action approving or disapproving the new regulation. If EPA disapproves the new submittal, the conditional approval will also be disapproved at that time. If EPA approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved regulation in the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 9, 2003 without further notice unless the Agency receives relevant adverse comments by May 8, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 9, 2003 and no further action will be taken on the proposed rule.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

■ 2. Section 52.1119 is amended by adding paragraph (a)(3) to read as follows:

§ 52.1119 Identification of plan.

* * * * *

(a) * * *

(3) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection dated August 9, 2001.

(i) Incorporation by reference.

(A) Revisions to the Massachusetts Regulations for the Control of Air Pollution, section 310 CMR 7.06 (1)(c), dated August 3, 2001.

(ii) Additional materials:

(A) Letter from the Massachusetts Department of Environmental Protection dated September 12, 2002 submitting a commitment to revise section 310 CMR 7.06 (1)(c) of Massachusetts State Implementation Plan by one year from today.

■ 3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations and by adding new state citations to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.06(1)(c)	Visible Emissions	8/9/01	[Insert date of publication].	[Insert *FR* citation from published date].	None	Conditional approval at 52.1119(a)(3).
*	*	*	*	*	*	*

[FR Doc. 03–8359 Filed 4–7–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 25, 74, 78, and 101

[IB Docket No. 98–172, FCC 02–317]

Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document alters the 18 GHz band plan, blanket licensing rules, and relocation rules adopted in a previous First Order on Reconsideration in this proceeding released in 2001. This document changes certain rules in light of the increased number of frequency spectrum options the Commission has recently made available to certain licensees. The rule changes will remove unnecessary burdens on the public and the agency.

DATES: Effective May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration, FCC 02–317, released on November 26, 2002. The full texts of the documents are available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The documents are also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-317.* The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, Telephone: 202–863–2893, Fax: 202–863–2898, e-mail *qualexint@aol.com.*

Summary of Report and Order

1. On June 8, 2000, the Commission adopted a Report and Order in this proceeding (18 GHz Order) 65 FR 54155, September 7, 2000 which, among other things, concluded that terrestrial fixed service (FS) and ubiquitously deployed fixed-satellite service (FSS) earth stations generally could not share the same 18 GHz spectrum. Thus, in the 18 GHz Order, the Commission separated most terrestrial FS operations from most FSS operations by allocating separate sub-bands to each service; however, the Commission retained co-primary allocations for geostationary orbiting (GSO) FSS and FS operations in the 18.3–18.58 GHz band.

2. In response to the original 18 GHz Order, we received petitions for reconsideration from several parties, including Hughes Electronics Corporation (Hughes), a proponent of GSO FSS operations. On November 1, 2001, we released a First Order on Reconsideration 66 FR 63512, December 7, 2000 in this proceeding that resolved many of the petitioners' concerns. We deferred action, however, on two elements of Hughes' petition: (1) That we reconsider the co-primary allocation for FS in the 18.3–18.58 GHz band; and (2) that we permit blanket licensing of earth stations receiving in certain portions of the 18 GHz band.

3. Shortly after the Commission adopted the First Order on Reconsideration, the United States Circuit Court of Appeals for the D.C. Circuit issued an order rejecting a separate challenge to the 18 GHz Order from another FSS licensee in the 18 GHz band. In December 2001, the D.C. Circuit rejected those elements of the appeal not rendered moot by our First Order on Reconsideration. Concluding that the Commission's 18 GHz Order was entitled to the heightened degree of deference traditionally accorded decisions regarding spectrum management, the D.C. Circuit upheld the relocation policies and procedures adopted in the 18 GHz Order that had been challenged.

4. Since that time, the Commission has expanded the eligibility requirements to enable the vast majority of FS operators in the 18.3–18.58 GHz band to access other spectrum. On May 16, 2002, the Commission adopted the CARS Eligibility Order 67 FR 43257, June 27, 2002, which permitted all multichannel video programming distributors (MVPDs) to become eligible for Cable Television Relay Service (CARS) licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands. Lifting eligibility restrictions on licenses in the 12.7–13.2 GHz and 17.7–18.3 GHz bands reversed a longstanding Commission policy that had allowed franchised cable systems and wireless cable systems to become CARS licensees, but denied the same opportunity to non-eligible competitors to traditional cable systems, such as private cable operators (PCOs), which are dependent on the 18 GHz band. MVPD licensees who operate in the 18.3–18.58 GHz band are, following adoption of the CARS Eligibility Order, generally eligible for licenses in these alternative CARS bands.

5. In this Order, the Commission alters the 18 GHz band plan to make the FSS the sole primary spectrum allocation in the 18.3–18.58 GHz band. This action recognizes the Commission's recent decision to make additional spectrum available to current, co-primary users of the 18.3–18.58 GHz band. This Order also permits the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz and 29.25–29.5 GHz bands, and—consistent with the band clearing procedures that have been adopted in other proceedings—this Order adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to our rules will help promote the efficient use of spectrum for existing and future users.

6. Finally, this Order denies a Petition for Reconsideration of the First Order on Reconsideration filed by the Satellite Industry Association (SIA). SIA questions the Commission's relocation procedures and one-year testing period upon relocation set forth in the First Order on Reconsideration. In the Order, the Commission declined to depart from precedent and stated that the relocation procedures and one-year testing period have been adequately justified and alternatives adequately explored in light of the Commission's overall spectrum management goals.

7. On January 27, 2003, the Commission released an erratum to this Order. The erratum corrects omissions in the rule changes proposed in the Order. The final rules contain the omissions.

Procedural Matters

8. *Paperwork Reduction Act.* The rules adopted in this Second Order on Reconsideration involve no reporting requirements, and it is likely no additional outside professional skills will be necessary to comply with the rules and requirements here listed.

9. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the 18 GHz NPRM (63 FR 54100, October 8, 1998). The Commission sought written public

comments on the proposals in the 18 GHz NPRM, including comment on the IRFA. In its 18 GHz Order, the Commission concluded that the rules adopted in that Order would not, under the RFA, affect small entities disproportionately. Many of the rules adopted in the 18 GHz Order pertained to entities, such as licensees of geostationary and non-geostationary space stations, which, because of their size, do not qualify as small entities. While a few of the rules adopted concerned terrestrial facilities, such as microwave services, which qualify as small entities because of their size, the Commission concluded that ''procedures do not affect small entities disproportionately and it is likely no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service.'' We received no petitions for reconsideration of that Final Regulatory Flexibility Analysis.

10. Subsequently, the Commission addressed issues unrelated to its RFA analysis in its First Order on Reconsideration. The First Order on Reconsideration altered several previously adopted rules, including changing the power flux density value for the 18.3–18.8 GHz frequency band and extending the same ten-year comparable facilities relocation policy to all FS operations in the 18 GHz band. The First Order on Reconsideration also decided no longer to require the use of the Legacy List coordination process. Finally, the Commission considered the impact of it rule changes on small entities and concluded that the rules adopted would not, under the RFA, affect small entities disproportionately.

11. In this Second Order on Reconsideration, we address issues unrelated to earlier RFA analysis and promulgate additional final rules. This additional Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

12. This Second Order on Reconsideration grants, in part, a Petition for Reconsideration filed in this proceeding by the Hughes Electronics Corporation (Hughes). This Order also denies a Petition for Reconsideration filed by the Satellite Industry Association (SIA) filed against the First Order on Reconsideration. In response to the Hughes Reconsideration Petition, the Commission alters the 18 GHz band plan to make the fixed-satellite service (FSS) the sole primary spectrum allocation in the 18.3–18.58 GHz band. The Commission's actions recognize the increased number of frequency spectrum options that the Commission has recently made available to licensees in the terrestrial fixed service (FS), the other primary service currently located in the 18.3–18.58 GHz band. The Commission also allows the blanket licensing of GSO FSS facilities in the 18.3–18.58 GHz band and 29.25–29.5 GHz bands and—consistent with the band clearing procedures that we have adopted in other portions of the frequency spectrum—the Commission adopts provisions designed to ensure the orderly migration and timely reimbursement of terrestrial FS incumbents in the 18.3–18.58 GHz band. These changes to the Commission's rules will help promote the efficient use of spectrum for existing and future users.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. No comments were submitted in direct response to the IRFA.

14. Description and Estimate of the Number of Small Entities to Which the *Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

15. *Satellite Telecommunications.* The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts. In addition, a second SBA size standard for Other Telecommunications includes ''facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems,'' and also has a size standard of annual receipts of $12.5 million or less. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 273 firms had annual receipts of $5 million to $9,999,999 and an additional 24 firms had annual receipts of $10 million to $24,999,990. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 1997, there were 439 firms in the category Satellite Telecommunications, total, that operated for the entire year. Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

16. *Space Stations (Geostationary).* Commission records reveal that there are 15 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

17. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are 10 operational fixed-satellite transmit/receive earth stations authorized for use in the 18.3–18.58 GHz and 29.25–29.5 GHz bands. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

18. *Broadcast Auxiliary Service.* (BAS) involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain

(from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million; (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million; (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

19. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Thus, under this standard, the majority of firms can be considered small.

20. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Thus, under this standard, the great majority of firms can be considered small.

21. *Fixed Microwave Services.* (FS) includes common carrier, private-operational fixed, and broadcast auxiliary radio services. Presently there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The SBA has developed a small business size standard for Cellular and other Wireless Telecommunications, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 had employment of 1,000 employees or more. Thus, under this standard, virtually all firms can be considered small. Microwave services in the 18.3–18.58 GHz band include point-to-point Private Cable Operator (PCO) systems, Cable Television Relay Systems and common carrier systems. Private point-to-point PCO systems use ninety-eight percent of the operational channels in the band; Cable Television Relay Systems less than two percent of the operational channels; and common carrier systems use less than one percent of the operational channels in the band.

22. *Report to Congress:* The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the **Federal Register**, 5 U.S.C. 605(b).

Ordering Clauses

23. Pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302, 303(c), 303(e), 303(f), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302, 303(c), 303(e), 303(f), 303(r), and 403, this Order is hereby adopted.

24. *It is further ordered* that the Petition for Reconsideration of Hughes Electronics Corporation is granted, in part, and denied in part.

25. *It is further ordered* that the Petition for Reconsideration of the Satellite Industry Association is denied.

26. *It is further ordered* that the Regulatory Flexibility Analysis, as required by section 604 of the Regulatory Flexibility Act, is adopted.

27. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order,* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

28. *It is further ordered* that this proceeding is terminated pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j).

List of Subjects in 47 CFR Parts 2, 21, 25, 74, 78, and 101

Auxiliary, Cable television relay service, Experimental radio, Fixed microwave services, Public fixed radio services, Reporting and recordkeeping requirements, Satellite communications, Special broadcast.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 21, 25, 74, 78, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising page 69 of the Table of Frequency Allocations and the Non-Government (NG) Footnotes to read as follows:

18.3–22.5 GHz (SHF)

[See previous page for 18.1–18.4 GHz]

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
18.4–18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE			18.3–18.6 FIXED-SATELLITE (space-to-Earth) G117 US334	18.3–18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.6–18.8	18.6–18.8	18.6–18.8	18.6–18.8	18.6–18.8	

18.3–22.5 GHz (SHF)—Continued

[See previous page for 18.1–18.4 GHz]

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A 5.522C	EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.222A	EARTH EXPLORATION SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	EARTH EXPLORATION SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	EARTH EXPLORATION SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8–19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.523A MOBILE			18.8–20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8–19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3–19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3–19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast (74) Cable TV Relay (78) Fixed Microwave (101)
19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524	19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7–20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524		19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG144 Stations authorized as of September 9, 1983 to use frequencies in the bands 17.7–18.3 GHz and 19.3–19.7 GHz may, upon proper application, continue operations. Fixed stations authorized in the 18.3–19.3 GHz band that remain co-primary under the provisions of 47 CFR 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter may continue operations consistent with the provisions of those sections.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

■ 3. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

■ 4. Section 21.901 is amended by revising paragraph (e) to read as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations for point-to-point return links from a subscriber's location on a shared co-primary basis with other services under parts 25, 74, 78 and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No applications for new licenses will be accepted in these bands after June 8, 2000.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 5. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 6. Section 25.115 is amended by revising paragraph (e) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(e) Earth stations operating in the 20/30 GHz Fixed-Satellite Service with U.S.-licensed or non-U.S. licensed satellites: Applications to license individual earth stations operating in the 20/30 GHz band shall be filed on FCC Form 312, Main Form and Schedule B, and shall also include the information described in § 25.138. Earth stations belonging to a network operating in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz or 29.25–30.0 GHz bands may be licensed on a blanket basis. Applications for such blanket authorization may be filed using FCC Form 312, Main Form and Schedule B, and specifying the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.138.

* * * * *

■ 7. Section 25.138 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 25.138 Blanket Licensing Provisions of GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

(a) All applications for a blanket earth station license in the GSO FSS in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands that meet the following requirements shall be routinely processed:

* * * * *

■ 8. Section 25.145 is amended by revising paragraph (h) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands

* * * * *

(h) *Policy governing the relocation of terrestrial services from the 18.3 to 19.3 GHz band.* Frequencies in the 18.3–19.3 GHz band listed in parts 21, 74, 78, and 101 of this chapter have been reallocated for primary use by the Fixed-Satellite Service, subject to various provisions for the existing terrestrial licenses. Fixed-Satellite Service operations are not entitled to protection from the co-primary operations until after the period during which terrestrial stations remain co-primary has expired. (see §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter).

■ 9. Section 25.202 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

* * * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.7–4.21 [1]	5.091–5.25 [12, 14]
6.7–7.025 [12]	5.925–6.4251 [1]
10.7–10.95 [1, 12]	12.75–13.15 [1, 12]
10.95–11.2 [1, 2, 12]	13.2125–13.25 [1, 12]
11.2–11.45 [1, 12]	13.75–14 [4, 12]
11.45–11.7 [1, 2, 12]	14–14.25 [5]
11.7–12.2 [3]	14.2–14.5
12.2–12.7 [13]	15.43–15.63 [12, 15]
18.3–18.58 [1, 10, 16]	17.3–17.89 [9]
18.58–18.8 [6, 10, 11]	27.5–29.5 [1]
18.8–19.3 [7, 10]	29.5–30
19.3–19.7 [8, 10]	48.2–50.2
19.7–20.2 [10]	
37.6–38.6	
40–41	

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the fixed-satellite service is limited to international systems; i.e., other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared co-equally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared co-equally with terrestrial radiocommunications services until June 8, 2010, except for operations in the band 19.26–19.3 GHz and for low power systems operating under Section 101.147(r)(10), which shall operate on a co-primary basis until October 31, 2011.

[8] The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

[9] The use of the band 17.3–17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for the Direct Broadcast Satellite Service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government fixed-satellite service.

[11] The band 18.6–18.8 GHz is shared co-equally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the fixed-satellite service is limited to gateway earth station operations.

[13] Use of this band by the fixed-satellite service is limited to non-geostationary satellite orbit systems.

[14] See 47 CFR 2.106, footnotes S5.444A and US344, for conditions that apply to this band.

[15] See 47 CFR 2.106, footnotes S5.511C and US359, for conditions that apply to this band.

[16] The band 18.3–18.58 GHz is shared co-equally with terrestrial radiocommunications services until November 19, 2012.

* * * * *

■ 10. Section 25.258 is amended by revising paragraph (b) to read as follows:

§ 25.258 Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz Bands.

* * * * *

(b) Licensed GSO FSS systems shall, to the maximum extent possible, operate with frequency/polarization selections, in the vicinity of operational or planned NGSO MSS feeder link earth station complexes, that will minimize instances of unacceptable interference to the GSO FSS space stations. Earth station licensees operating with GSO FSS systems shall be capable of providing earth station locations to support coordination of NGSO MSS feeder link stations under paragraphs (a) and (c) of this section. Operation of ubiquitously deployed GSO FSS earth stations in the 29.25–29.5 GHz frequency band shall conform to the rules contained in § 25.138.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 11. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1032; 47 U.S.C. 158, 303.

■ 12. Section 74.502 is amended by revising paragraph (c) introductory text to read as follows:

§ 74.502 Frequency assignment.

* * * * *

(c) Aural broadcast STL and intercity relay stations that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations in the band 18,760–18,820 and 19,100–19,160 MHz on a shared co-primary basis with other services under parts 21, 25, and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No applications for new licenses will be accepted in these bands after June 8, 2000.

* * * * *

■ 13. Section 74.551 is amended by revising paragraph (d) to read as follows:

§ 74.551 Equipment changes.

* * * * *

(d) Permissible changes in equipment operating in the bands 18.3–18.58, 18.76–18.82 GHz and 19.1–19.16 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.502(c) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

§ 74.602 Frequency assignment.

■ 14. Section 74.602 is amended by revising paragraph (g) introductory text to read as follows:

* * * * *

(g) The following frequencies are available for assignment to television STL, television relay stations and television translator relay stations. Stations operating on frequencies in the sub-bands 18.3–18.58 GHz and 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, 78, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new applications for new licenses will be accepted in the 19.26–19.3 GHz band after June 8, 2000, and no new applications for new licenses will be accepted in the 18.3–18.58 GHz band after November 19, 2002. The provisions of § 74.604 do not apply to the use of these frequencies. Licensees may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 101.103(d) of this chapter.

* * * * *

■ 15. Section 74.651 is amended by revising paragraph (c) to read as follows:

§ 74.651 Equipment changes.

* * * * *

(c) Permissible changes in equipment operating in the bands 18.3–18.58 GHz and 19.26–19.3 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.602(g) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 16. The authority citation for part 78 continues to read as follows:

Authority: Secs. 4(i), 301 and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r)).

■ 17. Section 78.18 is amended by revising paragraph (a)(4) introductory text to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the 17,700–19,700 MHz band. These frequencies are co-equally shared with stations in other services under parts 25, 74, and 101 of this chapter. Cable Television Relay Service stations operating on frequencies in the sub-bands 18.3–18.58 GHz and 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 25, 74, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new applications for part 78 licenses will be accepted in the 19.26–19.3 GHz band after June 8, 2000, and no new applications for part 78 licenses will be accepted in the 18.3–18.58 GHz band after November 19, 2002.

* * * * *

■ 18. Section 78.109 is amended by revising paragraph (d) as follows:

§ 78.109 Equipment changes.

* * * * *

(d) *Permissible changes in equipment operating in the bands 18.3–18.58 GHz and 19.26–19.3 GHz.* Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 78.18(a)(4) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate, unless the modifications are needed as a result of a Commission requirement.

PART 101—FIXED MICROWAVE SERVICES

■ 19. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

■ 19a. Section 101.83 is revised to read as follows:

§ 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.3–19.3 GHz: Notwithstanding other provisions of this section, stations that remain co-primary under the provisions of § 101.147(r) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

■ 20. Section 101.85 is amended by revising the section heading, the introductory text and paragraphs (a) and (b) to read as follows:

§ 101.85 Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

Fixed services (FS) frequencies in the 18.3–19.3 GHz bands listed in §§ 21.901(e), 74.502(c), 74.602(g), and 78.18(a)(4) and § 101.147(a) and (r) of this chapter have been allocated for use by the fixed-satellite service (FSS). The rules in this section provide for a transition period during which FSS licensees may relocate existing FS licensees using these frequencies to other frequency bands, media or facilities.

(a) FSS licensees may negotiate with FS licensees authorized to use frequencies in the 18.3–19.30 GHz bands for the purpose of agreeing to terms under which the FS licensees would:

(1) Relocate their operations to other frequency bands, media or facilities; or alternatively

(2) Accept a sharing arrangement with the FSS licensee that may result in an otherwise impermissible level of interference to the FSS operations.

(b)(1) FS operations in the 18.3–18.58 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and § 101.147(r) of this chapter will continue to be co-primary with the FSS users of this spectrum until November 19, 2012 or until the relocation of the fixed service operations, whichever occurs sooner.

(2) FS operations in the 18.58–19.3 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), 78.18(a)(4) and § 101.147(r) of this chapter will continue to be co-primary with the FSS users of this spectrum until June 8, 2010 or until the relocation of the fixed service operations, whichever occurs sooner, except for operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.47(r)(10), which shall operate on a co-primary basis until October 31, 2011.

(3) If no agreement is reached during the negotiations pursuant to § 101.85(a), an FSS licensee may initiate relocation procedures. Under the relocation procedures, the incumbent is required to relocate, provided that the FSS licensee meets the conditions of § 101.91.

* * * * *

■ 21. Section 101.95 is amended by revising the section heading to read as follows:

§ 101.95 Sunset provisions for licensees in the 18.30–19.30 GHz band.

■ 22. Section 101.97 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 101.97 Future licensing in the 18.30–19.30 GHz band.

(a) All major modifications and extensions to existing FS systems in the 18.3–18.58 band after November 19, 2002, or in the 18.58–19.30 band after June 8, 2000 (with the exception of certain low power operations authorized under § 101.147(r)(10)) will be authorized on a secondary basis to FSS systems. All other modifications will render the modified FS license secondary to FSS operations, unless the incumbent affirmatively justifies primary status and the incumbent FS licensee establishes that the modification would not add to the relocation costs for FSS licensees. Incumbent FS licensees will maintain primary status for the following technical changes:

* * * * *

23. Section 101.147 is amended by revising paragraph (r) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz:* Operation of stations using frequencies in these bands is permitted to the extent specified below.

(1) Until November 19, 2012, stations operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(2) Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.47(r)(10) shall operate on a co-primary basis;

(3) Until June 8, 2010, stations operating in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(4) Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of the Commission's rules;

(5) After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations.

(6) After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations.

(7) After November 19, 2002, no new applications for Part 101 licenses will be accepted in the 18.3–18.58 GHz band.

(8) After June 8, 2000, no new applications for Part 101 licenses will be accepted in the 18.58–19.3 GHz band.

(9) Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the above conditions related to the 18.58–19.3 GHz band.)

* * * * *

[FR Doc. 03–7322 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–813]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on

these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective April 8, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 299C2 and adding Channel 299C1 at Wrightsville.
■ 3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 300C1 and adding Channel 300C2 at Hampton.
■ 4. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 271C1 and adding Channel 271C3 at Driggs.
■ 5. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 258C1 and adding Channel 258C0 at Lake Charles.
■ 6. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 276C2 and adding Channel 276C1 at Ocean Springs.
■ 7. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275C and adding Channel 275C0 at Kirtland.
■ 8. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 233C and adding Channel 233C0 at Canyon City.
■ 9. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 262C and adding Channel 262C0 at Brownsville.
■ 10. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by removing Channel 236B and adding Channel 237B at Christiansted.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8408 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1847 and 1852

Shipment by Government Bills of Lading

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, the interim rule published in the **Federal Register** on June 6, 2002, which amended the NASA Federal Acquisition Regulation Supplement (NFS) to specify that shipment by Government Bills of Lading (GBLs) may only be used to ship international and domestic overseas items deliverable under contracts, and that all other shipments are to be made via Commercial Bills of Lading (CBLs).

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION: Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, telephone: (202) 358–4593, e-mail to: *Louis.G.Becker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Effective March 31, 2002, the General Services Administration (GSA) retired the use of Optional Form 1103, U.S. Government Bill of Lading (GBL) and Optional Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (PPGBL) for domestic shipments. NASA published an interim rule in the **Federal Register** on June 6, 2002, amending the NFS to comply with changes to the Federal Management Regulation (FMR) part 102–117 (41 CFR 102–117), Transportation Management, published in the **Federal Register** on October 6, 2000 (65 FR 60060), and FMR part 102–118 (41 CFR 102–118), Transportation Payment and Audit, published in the **Federal Register** on April 26, 2000 (65 FR 24568). The interim rule revised NASA clause 1852.247–30, Bills of Lading, to indicate that GBLs may only be used to ship international and domestic overseas items deliverable under contracts, and all other domestic shipments shall be made via Commercial Bills of Lading (CBL).

This is not a significant regulatory action, and therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change only affects contracts where the point of delivery for domestic shipments of items deliverable under a contract is f.o.b. origin.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose new recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1847 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final Without Change

■ Accordingly, NASA adopts the interim rule amending 48 CFR parts 1847 and 1852, published in the **Federal Register** on June 6, 2002 (67 FR 38908), as a final rule without change.

Authority: 42 U.S.C. 2473(c)(1).

PART 1847—TRANSPORTATION

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

[FR Doc. 03–8539 Filed 4–7–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH76

Endangered and Threatened Wildlife and Plants; Endangered Status and Designation of Critical Habitat for *Polygonum hickmanii* (Scotts Valley polygonum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Polygonum hickmanii* (Scotts Valley polygonum). *Polygonum hickmanii* is restricted to two sites in northern Scotts Valley, Santa Cruz County, California. We are also designating critical habitat pursuant to the Act for this species; 116 hectares (287 acres) of land are designated as critical habitat. This rule implements the protection and recovery provisions afforded by the Act for this species.

DATES: This rule becomes effective on May 8, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, at the above address or telephone number 805/644–1766, facsimile 805/644–3958 or e-mail at *connie_rutherford@fws.gov.* Information regarding this rulemaking is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii (Scotts Valley polygonum) is a recently described endemic plant species from Scotts Valley, Santa Cruz County, California (Hinds and Morgan 1995). Randy Morgan made the type collection in 1993 from a ''grassland [north] of Navarra Drive, [west] of Carbonero Creek'' (Hinds and Morgan 1995). The species was named after James C. Hickman, editor of the Jepson Manual-Higher Plants of California (Hickman 1993) and author of the chapter on the genus *Polygonum* in the same reference. Hickman concurred with Morgan's assessment that the taxon was distinct (J.C. Hickman, *in litt.* 1991), but died before coauthoring the publication of a name. The plant is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in)) tall and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in) long, 1 to 1.5 mm (0.04 to 0.06 in) wide, and tipped with a sharp point. The single white flowers consist of two outer and three inner tepals (petal-like structure) and are found in the axils of the bracteal leaves (modified leaves near the flower).

The nearest known location of a closely related species, *Polygonum parryi,* is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan 1995). According to the late Harold Hinds, who was reviewing the genus *Polygonum* in an upcoming volume of the Flora of North America (Flora of North America Editorial Committee, in prep.), he intended to continue to recognize the distinctness of *P. hickmanii* as a species in that volume (Harold Hinds, University of New Brunswick, pers. comm., 1998). His successor, Mihai Costea, indicates there is no reason to doubt the validity of the taxon (M. Costea, University of Guelph, Ontario, Canada, *in litt.* 2002).

As with many other annual species found within Mediterranean climates in California (Holland and Keil 1990), *Polygonum hickmanii* germinates in the fall or early winter in response to winter season rains. The plant grows slowly over the next few months and remains fairly inconspicuous until flowering begins in May. The panicles (floral branches) are indeterminate in their growth, meaning that the oldest flowers are found near the base of the stem and younger flowers found near the continually growing tip. The degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. However, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual *P. hickmanii* (R. Morgan, pers. comm., 1998).

With the type of floral development found in *P. hickmanii,* new flowers will continue to be produced until climate or microhabitat conditions are no longer favorable. Consequently, seed production ranges from a few dozen seeds in a typical individual to as many as two hundred in a particularly robust individual (Randy Morgan, biological consultant, pers. comm., 1998).

The seeds of many plant taxa within the buckwheat family (Polygonanceae) are known to be attractive forage to wildlife, who then inadvertently disperse some portion of the seed. Because the seed of *Polygonum hickmanii* are small, they most likely would be attractive to birds and small mammals including such species as black-tailed hares (*Lepus californicus*), pocket mice (*Perognathus californicus*), western gray squirrel (*Sciurus griseus*), ground squirrels (*Otospermophilus beecheyi*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*) and racoons (*Procyon lotor*).

Maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important to the year-to-year and long-term survival of annual plants (Baskin and Baskin 1978, Baskin and Baskin 1998). A seed bank includes all the mature seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1995). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population and large fluctuations in the number of standing plants at a given site may occur from one year to the next.

The distribution of *Polygonum hickmanii* has apparently been limited to the northern Scotts Valley area in Santa Cruz County, California. Two bodies of evidence support this theory. First, none of the herbarium collections of other *Polygonum* species that were checked in preparation for the publication of the name for *P. hickmanii* matched those collected from Scotts Valley. Herbaria that were searched included the Dudley Herbarium at Stanford University, the Jepson and University of California (UC) herbaria located at UC Berkeley, and the herbarium at the Missouri Botanic Garden (H. Hinds, *in litt.* 1998; R. Morgan, pers. comm., 1998). Secondly, predictive searches of other potentially suitable habitat in Santa Cruz County (based on soil type, local climate, and associated species) have failed to locate additional colonies of *P. hickmanii* (R. Morgan, pers. comm., 1998).

Polygonum hickmanii is found at two sites about 0.6 km (1 mi) apart at the northern end of Scotts Valley. The plant is found on gently sloping to nearly

level shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). It frequently, though not always, occurs with the endangered *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) (59 FR 5499) and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches, scattered in a mosaic throughout the grassland plant community, have been referred to as ''wildflower fields'' because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of nonnative grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of nonnative grasses and herbs.

Although the patches of wildflower field habitat stand out in contrast to the surrounding grasslands, a closer look at the wildflower field patches reveals slight microhabitat differences within the patch itself. The outer edge, or ''ring'' of the patch supports the greatest diversity of the native herbs, which are found on the deepest soils within the patch. Moving toward the center of the patch, the soil layer is shallower, and another ring supporting primarily the endangered *Chorizanthe robusta* var. *hartwegii* occurs here. In the very center of the patch where the soils are shallowest, the greatest concentration of *Polygonum hickmanii* is found, and other species are sparse. The surface soil texture in the center of the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Flowering in *P. hickmanii* lags behind that of the endangered *Chorizanthe robusta* var. *hartwegii* and the other herbs by 4 to 8 weeks, and the consolidated soil surface may play a role in supplying late spring moisture to the species (R. Morgan, pers. Comm. 2003).

Elevation of the sites is from 215 to 246 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). In the Scotts Valley area, the grasslands tend to be located on the middle to lower slopes within the subwatersheds, while the slopes above the grasslands tend to support redwood and mixed forest plant communities. On the Polo parcel, the slopes become increasingly steep from west to east; slopes nearest to Carbonero Creek on the western edge of the parcel are less than 20 percent, the slopes in the middle of the parcel range from 20 to 40 percent, and the slopes along the eastern edge of the parcel up to the ridgeline reach over 40 percent. Geologic reports discuss several hazards that contribute to the geologic instability of the site. First, the site is within a seismically active region that experiences groundshaking. Second, the site has been subject to landslide activity, and evidences of past debris flows have been observed on the site. Third, due to the impermeable nature of the Purisima Formation bedrock, seasonal perched groundwater conditions are common in areas where the bedrock is overlain by alluvium (material deposited by flowing water) and colluvium (loose deposit of rock debris accumulated at the base of a cliff or slope), which contributes to slope instability (Impact Sciences 2000).

The geology of the Glenwood parcel has some similarities to the Polo parcel. Santa Cruz mudstone underlays the lower slopes and alluvial deposits, and the Purisima Formation underlays the upper slopes and ridges. The lowest elevations are along Carbonero Creek, which runs through the middle of the parcel from north to south. Similar to the Polo parcel, the mildest slopes are adjacent to the creek, while the slopes generally increase with increased distance from the creek, and slopes along the ridges to the east and west reach over 30 percent (Impact Sciences 1997, 1998). Geologic hazards on the site that contribute to slope instability include seismic hazards, landslide activity, high erosion, and sedimentation potential due to the presence of springs and drainages and the impermeable nature of the Purisima Formation on the upper slopes. Although soil erosion and sedimentation are natural processes, human activities can increase the rates above their natural levels (Global Change Research Information Office (GCRIC) 2002). Processes such as soil erosion on upper slopes, the accumulation of sedimentation on lower slopes, and soil compaction can alter the physical and chemical properties of those soils sufficiently to change their ability to store and supply nutrients and moisture needed by plants (GCRIC 2002). The persistence of plants with specific microhabitat requirements depends on maintaining the appropriate edaphic or soil conditions. Maintaining the stability of the higher slopes within a subwatershed are therefore important for maintaining the stability of the edaphic conditions directly downslope.

Polygonum hickmanii is associated with a number of native herbs including *Chorizanthe robusta* var. *hartwegii, Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Nonnative species present at the two sites include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm., 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

For purposes of this rule, a concentration of individuals of *Polygonum hickmanii* will be referred to as a ''colony.'' Because of the close proximity of many of the colonies to each other (less than 0.4 km (0.2 mi) apart), it is unknown whether they function as genetically separate units or not. The approximate area occupied by any one colony ranges from the smallest at 1.5 m by 1.5 m (5 ft by 5 ft) to the largest at 15 m by 9 m (50 ft by 30 ft). Currently, there are approximately 11 colonies of *P. hickmanii* in total; the area covered by observable plants is less than 0.4 hectare (ha) (1 acre (ac)).

The *Polygonum hickmanii* colonies are split between two sites—the Glenwood site and the Polo Ranch site. The Glenwood site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley; it contains five colonies on two parcels of land. One of these colonies is situated within a 3.6 ha (9 ac) preserve on a 19.4 ha (48 ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the ''School District'' colony (Denise Duffy and Associates 1998). The other four colonies at the Glenwood site are located approximately 0.21 km (0.13 mi) to the west of the School District colony, on a parcel of land owned by the Salvation Army (CNDDB 1998). These four colonies are referred to as the ''Salvation Army'' colonies. Additional suitable but unoccupied habitat is found on the east side of Glenwood Drive on a parcel owned by Glenwood/American Dream. This parcel was recently approved for a housing development; a large portion of the parcel will be designated as ''open space,'' and a management plan will be developed to take into consideration the conservation of sensitive resources (Wetlands Research Associates 2002). This open space area supports numerous colonies of *Chorizanthe robusta* var. *hartwegii*, which is frequently found in the same wildflower field patches as *Polygonum hickmanii*, as well as the endangered Ohlone tiger

beetle (*Cicindela ohlone*) (Impact Sciences 2001).

The Polo Ranch site contains six colonies. This site is located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, and is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997; Impact Sciences 2000).

Polygonum hickmanii is a short-lived annual species, and the total number of individuals can vary from year to year. In 2002, the total number of individual stems found at the Glenwood site was approximately 340 (140 on the School District parcel and approximately 200 on the Salvation Army parcel) (K. Lyons, *in litt.* 2002; Biotic Resources Group 2002); the Salvation Army parcel supported as many as 2,000 plants in 1998 (K. Lyons, pers. comm., 1998). In 1998, the total number of individuals on the Polo Ranch site was approximately 1,259 (K. Lyons, *in litt.* 1997).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in 1992 during the development of the proposed listing rule for *Chorizanthe robusta* var. *hartwegii* (66 FR 10469). At that time, however, a name for the taxon had not formally been published, and so we did not consider it for listing under the Act. Once the name, *P. hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and we determined that sufficient information existed to believe that listing may be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

On November 9, 2000, we published a rule to propose (65 FR 67335) *Polygonum hickmanii* as an endangered species. At the time of the proposed listing, we determined that critical habitat for *P. hickmanii* was prudent, but deferred proposing critical habitat designation until a proposal to designate critical habitat could be developed for both *P. hickmanii* and *Chorizanthe robusta* var. *hartwegii*, a plant species already listed as endangered, because the two taxa share the same ecology and geographic location. We proposed critical habitat for both of these taxa on February 15, 2001 (66 FR 10469); the final critical habitat designation for *Chorizanthe robusta* var. *hartwegii* was published on May 29, 2002 (67 FR 37336). On May 22, 2002, the Center for Biological Diversity (CBD) filed a lawsuit alleging our failure to issue a final listing and critical habitat designation for *P. hickmanii* violated the time requirements specified in the Act. In settlement of this lawsuit, we agreed to complete the final listing and critical habitat designations by March 30, 2003.

Summary of Comments and Recommendations

In the November 9, 2000, proposed rule to list the species (65 FR 67335) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on January 8, 2001. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice announcing the publication of the listing proposal was published in the Santa Cruz Sentinel on November 16, 2000. Another comment period opened on February 15, 2001, when the proposed critical habitat designation for *Chorizanthe robusta* var. *hartwegii* and *Polygonum hickmanii* was published. This 60-day comment period closed on April 16, 2001. A legal notice announcing the publication of the proposed critical habitat designation was published in the Santa Cruz Sentinel on February 24, 2001. Additionally, we published a notice on November 21, 2002, announcing the availability of the draft economic analysis on the proposed critical habitat designation. This notice subsequently opened the public comment period for 15 days, until December 6, 2002, on the proposed listing rule, the proposed critical habitat designation, and the draft economic analysis on the proposed critical habitat designation.

During the three comment periods, we received individually written comments from 17 parties. Twelve commenters expressed support for the listing proposal and the proposed critical habitat designation. One of the 17 commenters opposed the proposed critical habitat designation for *Polygonum hickmanii.* Four commenters were neutral, either on the proposed listing or the proposed critical habitat designation. Approximately 800 additional letters were submitted as part of a mailing campaign when critical habitat was proposed for the species. Of these, 23 were opposed, 1 was neutral, and the remaining were in support of the critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding the proposed listing of *Polygonum hickmanii*; most of the comments received were minor technical comments, and corrections and additions were made to the final rule accordingly. We also reviewed comments regarding the proposed critical habitat designation for *P. hickmanii.* Similar comments were grouped into two general issues relating specifically to biological issues, and procedural and legal issues. These are addressed in the summary that follows.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four peer reviewers regarding pertinent scientific or commercial data and assumptions relating to population status and biological and ecological information for the proposed listing of *Polygonum hickmanii* when it was published on November 9, 2000. Three of the four reviewers responded. These reviewers expressed support for the listing of the species and described the information included in the rule as factually correct to the best of their knowledge. Their comments are summarized in the following responses to comments and incorporated into the final rule.

We also solicited independent opinions from three additional knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed critical habitat designation when it was published on February 15, 2001. As recommended by the Service Directorate, we requested peer review from Sustainable Ecosystems Institute, as well as two other peer reviewers. All three of the peer reviewers supported the proposal, and provided us with comments that are summarized in the following responses to comments and incorporated into the final rule.

Issue 1: Biology and Methodology

Comment 1: The proposed critical habitat designation is not properly supported by the best scientific information available. In particular, the Service makes ''numerous and varied unsupported assertions regarding the biology and habitat requirements'' of the species, and did not use the data available to them.

Response: As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Polygonum hickmanii*. This information includes data from the California Natural Diversity Data Base (CNDDB 2000), geologic and soil survey maps (USGS 1989, SCS 1980), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that were proposed for designation.

Comment 2: One peer reviewer suggested expanding the list of primary constituent elements to include such factors as seed germination requirements, substrate salinity, microreliefs and microclimates within local habitats, seasonal and yearly groundwater levels, and bird populations that migrate within the range of *Polygonum hickmanii*.

Response: While we recognize that these factors may be important components of the habitats within which *Polygonum hickmanii* is found, we do not have sufficient information at this time that leads us to believe they are the primary factors essential to the conservation of *P. hickmanii* throughout its range.

Comment 3: One peer reviewer commented that, while the Service had reasonably performed the difficult task of identifying the primary constituent elements, that the importance of certain processes (*e.g.*, habitat disturbance, pollination, seed dispersal) was not sufficiently supported in the proposal. Specifically, the reviewer asserts that pollination activity within colonies more likely has a major effect on seed set and population persistence than does pollination activity between colonies, and that the majority of pollination occurs across short distances. The concern is that general statements of opinion could be translated into major management actions without adequate scientific basis.

Response: The peer reviewer that supplied these comments was responding to a request to concurrently review critical habitat proposals for four plant taxa. While we were unable to confirm this with the peer reviewer, we believe that the concern was directed primarily to two other of the four species that have significantly larger distributions than *Polygonum hickmanii*, in which case the concern over discriminating between within-colony and between-colony pollinator distances would be more germane.

With respect to *P. hickmanii*, the entire range of the species covers a distance of only 1.6 km (1 mi), with colonies clustered at the two proximal ends of this range. Although no information is available concerning the importance of pollinators to the long-term persistence of *P. hickmanii*, the distance between the colonies in each of the clusters is well within the 0.5 km (0.3 mi) distance that many native pollinators are thought to fly (Waser *in* litt. 2002).

Comment 4: One commenter submitted a map portraying a recommended revision to the proposed critical habitat covering the parcel owned by American Dream/Glenwood that would have reduced the extent of critical habitat on that parcel. The commenter suggested that the swath of low-elevation grasslands that occur along Carbonera Creek in the middle of the Glenwood Unit could be eliminated from critical habitat, as well as a portion of the Carbonera Creek watershed above them. The commenter suggested that the low-level grasslands do not support the primary constituent elements. Further the commenter suggested that the presence of existing residential development and the Scotts Valley High School along Glenwood Drive would make this area less desirable as a movement corridor for wildlife functioning as dispersal agents for *P. hickmanii*.

Response: While this narrow area of low-elevation grasslands does not contain wildflower fields, it is a grassland plant community that supports pollinators and seed dispersal agents for the wildflower fields. In addition, the low-level grassland along Carbonero Creek provide an important corridor for dispersers between the colonies on the west side and suitable, but unoccupied wildflower field habitat on the east side of Glenwood Valley. Similarly, the low-level grasslands would also be an important corridor to potential pollinators between the two sides of Glenwood Valley once *Polygonum hickmanii* is reestablished on the east side of the valley. Therefore, the low-level grasslands that occur along Carbonero Creek do include primary constituent elements.

The recent development of the Scotts Valley High School has reduced the extent of the corridor between the east and west sides of Carbonero Creek, and has therefore increased the conservation value and importance of the remaining corridor for pollinators and seed dispersers. In the background section of this final rule, we have expanded the discussion of potential seed dispersers and pollinators, which are part of the primary constituent elements, to clarify the role that these elements may play in the long-term conservation of the species.

In the case of *Polygonum hickmanii*, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Upon *P. hickmanii* being listed, we intend that the conservation recommendations included in this recovery plan will, in effect, become the recovery recommendation for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant.

As part of the recovery recommendations for *Polygonum hickmanii*, the recovery plan states that all known sites would have to be in protected status, a habitat conservation plan would have to be in place with the City of Scotts Valley, and population numbers would have to be stable or increasing (Service 1998). The limited range of the species, the limited opportunities for conservation, and the existence of threats on all locations where it occurs makes conservation of the species very difficult. Further loss of habitat or compromising the ecological processes on which the species depends may eliminate the ability of the species to persist. Therefore, we believe it is necessary to include the low-elevation grasslands in the critical habitat designation.

Issue 2: Legal and Procedural Issues

Comment 5: The proposed designation fails to designate specific areas as critical habitat, but instead used a landscape approach.

Response: The critical habitat designation delineates areas that support locations of known individuals of *Polygonum hickmanii* and areas with the primary constituent elements we believe essential to the long-term conservation of *P. hickmanii*. In fact, the distribution of *P. hickmanii* is so restricted that direct and indirect affects to its habitat will make recovery particularly challenging. However,

given the limited distribution of the species, we were able to map critical habitat with a higher level of accuracy and therefore believe we have identified specific areas meeting the definition of critical habitat.

Comment 6: The proposed designation improperly includes areas not essential to the conservation of *Polygonum hickmanii.*

Response: As result of mapping limitations, not all parcels of land proposed as critical habitat contained habitat components essential to the conservation of Polygonum hickmanii. In developing the final designation, we reevaluated and modified the boundaries of the proposed designation as appropriate to exclude areas that did not contain the primary constituent elements. The use of recently acquired high-resolution aerial photographs (April 2000) enabled us to more accurately map the designation. However, due to our mapping scale, some areas not essential to the conservation of *P. hickmanii* may be included within the boundaries of final critical habitat. Certain features, such as buildings, roads, other paved areas and urban landscaped areas do not contain the primary constituent elements for the species. Service staff at the contact numbers provided are available to assist landowners in discerning whether or not lands within the critical habitat boundaries actually possess the primary constituent elements for the species.

Comment 7: The commenter stated that the proposed designation should have delineated occupied and unoccupied habitat areas. Further, the commenter stated that there are a lack of data to demonstrate that colonies do in fact temporarily disappear or expand into areas surrounding the immediate vicinity of the current year's colony.

Response: In this final designation, both critical habitat units are occupied by either standing plants or support a *Polygonum hickmanii* seed bank, but each of the units probably contains areas that could be considered unoccupied by the species. ''Occupied'' is defined here as an area that may or may not have had above-ground standing plants of *P. hickmanii* during current surveys, but if no standing plants are apparent, the site likely contains a below-ground seed bank of undeterminable boundary. All occupied sites contain some or all of the primary constituent elements and are essential to the conservation of the species, as described below. ''Unoccupied'' is defined here as an area that contains no above-ground standing plant of *P. hickmanii* and is unlikely to contain a viable seed bank (*e.g.*, soils are currently deeper than what is optimal for the *Polygonum hickmanii*). The inclusion of unoccupied habitat in our critical habitat designation reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied habitat provides areas into which populations might expand, provides connectivity or linkage between colonies within a unit, and supports populations of pollinators and seed dispersal organisms.

Determining the specific areas that this taxon occupies is difficult for at least two reasons: (1) The way the current distribution of *Polygonum hickmanii* colonies is mapped can be variable, depending on the scale at which concentrations of individuals are recorded (*e.g.*, many small concentrations versus one large concentration); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions of annual species such as *P. hickmanii* may either shrink and temporarily disappear or, if there is a residual seedbank present, enlarge and cover a more extensive area (Baskin and Baskin 1998). Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, it would be difficult to quantify what proportion of each critical habitat unit may actually be occupied by *P. hickmanii.*

While the areas designated as critical habitat may include areas that do not currently support *Polygonum hickmanii*, we believe these areas are within the geographic area presently occupied by the species. However, even if they were considered to be outside this geographical area presently occupied, for the reasons discussed below we have determined that they are essential to the conservation of the *P. hickmanii.* Occupied areas, as well as the adjacent grassland areas provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation of *P. hickmanii.* We are designating critical habitat for *P. hickmanii* in all areas that are known to currently be occupied by the species. In addition, we believe it is necessary to protect unoccupied habitat on the slopes above the known occurrences of *P. hickmanii* because its persistence depends on maintaining the stability of the slopes on which it occurs. As discussed in the Background section of this rule, the characteristics of the geology and soils in the area make these slopes naturally prone to soil erosion. Human activities on the slopes above occurrences of *P. hickmanii* can exacerbate the natural rates of erosion and increase the risk of extirpation to *P. hickmanii* on the slopes below. At this time, we are not aware of additional populations of *P. hickmanii* nor additional areas that can be occupied by the species in the future.

Comment 8: The commenter expressed concern about whether there was any new information to be found that would have bearing on the proposed endangered status of *Polygonum hickmanii* or on the identification of habitats essential to the species.

Response: We have reviewed new information from the CNDDB, biological surveys, and botanists in the field familiar with the species, and we have made numerous visits to field sites since the early 1990s. Based upon this information, we believe that the range of the species is limited to the Scotts Valley area. Since the early 1990s, habitat for the species has been destroyed due to several development projects, and additional habitat has been altered due to secondary impacts resulting from development. According to a review of the socioeconomic information available about the geographic area presented in the draft economic analysis, pressure on the remaining suitable habitat for the species from residential and commercial development and recreation has increased steadily since we first became aware of the species in the early 1990s. The increased pressure on the limited area currently available for this species reinforces its endangered status and the need to designate critical habitat.

Comment 9: The Service has failed to properly consider the economic and other impacts of designating particular areas as critical habitat.

Response: The draft economic analysis for *P. hickmanii* was first published concurrently with that for *Chorizanthe robusta* var. *hartwegii.* We accepted comments on the draft economic analysis during a 30-day comment period for the latter species that started on September 19, 2001 (66 FR 48227). However, this comment was made prior to a subsequent reopening of the comment period for the draft economic analysis. On November 21, 2002 (66 FR 700199), we published another notice in the **Federal Register** announcing again the availability of the draft economic analysis for the critical habitat for *Polygonum hickmanii.* This notice opened a 15-day public comment period on the draft economic analysis for the proposed designation of critical habitat for *P. hickmanii.* All comments received regarding the economic

analysis for *P. hickmanii* are addressed in this Summary of Comments and Recommendations section. Additionally, an addendum to the economic analysis, incorporating the comments received on the economic analysis, has been completed and is available upon request (*see* **ADDRESSES**). We believe this economic analysis and its addendum along with this final rule do properly consider the economic and other impacts of designating particular areas as critical habitat.

Comment 10: The Service has improperly bifurcated or separated its consideration of the economic impacts and scientific analysis by not preparing the economic analysis at the time of the proposed critical habitat designation.

Response: Pursuant to section 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for *Polygonum hickmanii.* We published our proposed designation in the **Federal Register** on February 15, 2001 (66 FR 10469). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on November 21, 2002 (67 FR 70199), as well as in a previous 30-day open comment period associated with *Chorizanthe robusta* var. *hartwegii* (September 19, 2001, 66 FR 48227). Following the 15-day public comment period on the proposal and draft economic analysis opened on November 21, 2002, a final addendum to the economic analysis was developed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for *P. hickmanii.* Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

Comment 11: The Service has not provided a fair and meaningful opportunity for comment on its proposed critical habitat designation.

Response: In our proposed rule to list *Polygonum hickmanii* as endangered on November 9, 2000 (65 FR 67335), we found that designating critical habitat was prudent, but we stated that we would propose critical habitat concurrently with *Chorizanthe robusta* var. *hartwegii* in the future. An open comment period was held at that time to receive comments on the proposed listing, as well as the prudency determination. We published a proposed rule to designate critical habitat for *P. hickmanii* on February 15, 2001 (66 FR 10469), and accepted comments from the public for 60 days, until April 16, 2001. The comment period was reopened from November 21, 2002, to December 6, 2002 (67 FR 70199), to allow for additional comments on the proposed designation and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a legal notice in the Santa Cruz Sentinel on November 16, 2000, after the proposed rule to list was published, and again on February 24, 2001, after the proposed critical habitat designation was published. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. Additionally, the public had two opportunities to request a public hearing, but none was requested.

Comment 12: The Service should prepare and consider an environmental impact statement in keeping with the National Environmental Policy Act of 1969 (NEPA).

Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of NEPA, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Also, the public involvement and notification requirements under both the Endangered Species Act and the Administrative Procedure Act provide ample opportunity for public involvement in the process, similar to the opportunities for public involvement and economic analysis of effects that would be provided in the NEPA process.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Polygonum hickmanii* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment Of Its Habitat or Range

In addition to the colonies of *Polygonum hickmanii* at the Glenwood and Polo Ranch sites, other colonies of *P. hickmanii* may have occurred in Scotts Valley prior to publication of the species name in 1995. An existing housing development bordering the south side of the Glenwood site (Glen View) was built in the mid-1980s, and one development bordering the south side of the Polo Ranch site (Navarra Drive) was built in the 1970s. However, the environmental analyses done at those times would not have recognized *P. hickmanii* as a distinct taxon.

None of the occupied habitat for *Polygonum hickmanii* is targeted for direct destruction. However, all occupied habitat will be subject to habitat alteration resulting from current and proposed projects. At the Glenwood site, construction of a high school was initiated in June 1998. The colony of *P. hickmanii* on this site is within an area designated as a grassland preserve intended to protect a number of sensitive plant species, including *P. hickmanii, Minuartia californica* (California sandwort), *Plagiobothrys diffusus* (San Francisco popcorn flower), and the endangered *Chorizanthe robusta* var. *hartwegii.* The preserve is 2 ha (4 ac) in size and is adjacent to a wetland preserve of slightly smaller size. The combined area of the two preserves form a 3.6 ha (9 ac) area, linear in shape, sandwiched between high school playing fields to the north and the existing Glen View development (also known as Casa Way) to the south. The colony of *P. hickmanii* is 18 m (60 ft) away from the edge of the preserve nearest to the playing field. A management plan for the grasslands preserve includes prescriptions for boundary protection, habitat enhancement, control of nonnative plant species, and a 10-year monitoring program (BRG 1998). Although the effectiveness of this management plan has not yet been demonstrated, *P. hickmanii* will likely still be subject to habitat alteration due to the small size of the preserve and its proximity to other land uses. Problems with managing small preserves within urban areas have been documented previously (Jensen 1987, Clark *et al.* 1998, Howald 1993, Service 1995). *See* Factor E for additional discussion of inadequate preserve design on the long-term conservation of plants.

The kinds of habitat alteration that are anticipated to result from the high school project include changes in

surface hydrologic conditions due to the increased watering of the ballfield upslope from the preserve; changes in surface water quality due to the application of fertilizers, herbicides, and pesticides on the ballfield and adjacent areas up slope from the preserve; an increase in the number of nonnative plant species that will likely invade from adjacent newly altered areas; and an increase in the amount of soil erosion, soil compaction, and disturbance to the soil crust caused by the increased numbers of students, pets, and bicycles coming into the preserve from adjacent areas. The nature of the thin soils and the crusts of mosses and lichens they support make them particularly vulnerable to any form of surface disturbance (Belknap 1990).

The Scotts Valley Water District constructed a series of pipelines, maintenance roads, and tanks to distribute recycled water in the northern Scotts Valley area (EMC Planning Group 1998; Scotts Valley Water District 1998). One pipeline and an all-weather maintenance road pass through the southwestern corner of the preserve and continue to the north and west onto a parcel owned by the Salvation Army where a water tank would be installed. As originally proposed, this route was to come within 23 m (75 ft) of the colonies of *Polygonum hickmanii* on the Salvation Army parcel and within 18 m (60 ft) of the endangered *Chorizanthe robusta* var. *hartwegii* (K. Lyons, pers. comm., 1998). However, when road grading was initiated in July 1999, grading plans were not followed closely. Moreover, measures to minimize and mitigate impacts to sensitive resources included in the approved project were not implemented. As a result, road grading came to within 3 m (10 ft) of *P. hickmanii* and to within 6 m (20 ft) of *C. r.* var. *hartwegii* on the Salvation Army parcel; on the adjacent high school preserve, individuals of *C. r. hartwegii* were destroyed. (Vince Cheap, California Native Plant Society, *in litt.* 1999; V. Cheap, *in litt.* 2001).

The kinds of habitat alteration that are anticipated to impact *Polygonum hickmanii* from the Water District's project include changes in surface hydrology due to the placement of the road upslope from the colonies; changes in surface water quality due to the application of herbicides, pesticides, and tackifiers (dust reducing substances) on the road and roadsides upslope from the colonies; an increase in the amount of soil siltation from the upslope roadbank; soil erosion, soil compaction, and disturbance of the soil crust; and an increase in the number of nonnative plant species that will likely invade from the road.

A visit to the Glenwood site confirmed that the nonnative plant *Genista monspessulana* (French broom) has invaded to within a few feet of one of the colonies of *Polygonum hickmanii* in the last few years (Carole Kelley, Friends of Glenwood, pers. comm., 1998). If not controlled, this invasive plant could quickly eliminate habitat for the *P. hickmanii.* French broom is considered a pest species, which in some places forms impenetrable thickets that displace native vegetation and lower habitat value for wildlife (Habitat Restoration Group, no date; Bossard, *et al.* 2000).

A housing development proposed for the Polo Ranch site includes 30 to 40 housing units clustered on 7.3 of 47.0 ha (18 of 116 ac), with the remaining 38 ha (95 acres) kept as open space (City of Scotts Valley 1998). At the time the proposed rule to list *Polygonum hickmanii* was prepared, the proposed development placed houses and roadways within 18 m (60 ft) or closer to five out of six colonies of *P. hickmanii* and separated the colonies from each other, with three of the six colonies isolated on all sides either by existing or proposed dwellings and roadways. As of 2002, the planned layout of houses has been modified to include a 31-m (100-ft) setback from all but one of the colonies (M. Fodge, Planning Department, City of Scotts Valley, pers. comm., 2002; G. Deghi, consultant, pers. comm., 2002).

Alterations of habitat for *Polygonum hickmanii* that are likely to occur as a result of the Polo Ranch development are changes in surface hydrologic conditions due to the grading of roads and lots; soil erosion, soil compaction, and disturbance of the soil crust by humans, pets, and bicycle traffic; inadvertent (*i.e.*, aerial drift) and intentional application of herbicides, pesticides, and fertilizers on roadsides and yards; inadvertent introduction of nonnative species (both weedy and ornamental); and dumping of yard wastes. Examples of alteration of habitat that have occurred on grasslands north of the backyards of existing housing along Navarra Drive (along the south edge of the Polo Ranch property) include gates and pathways leading from backyards onto the grassland, ivy creeping over fences and onto the grassland, oaks (*Quercus* sp.) planted within the grassland, and shade created by planted backyard trees (K. Lyons, pers. comm., 1998).

Although two of the projects (high school and recycled water distribution system) include plans for conservation of *Polygonum hickmanii* through development-related mitigation, and the third project (Polo Ranch) would be expected to do so as well, the successful implementation of these mitigation plans has not been demonstrated. In particular, the size and characteristics of preserve areas and open spaces and the management actions prescribed through the environmental review process (see Factor D) are unlikely to be biologically adequate to ensure the long-term conservation of *P. hickmanii* and its habitat. In addition, since *P. hickmanii* colonies will be in preserves or open spaces that are small in area, support small numbers of individuals, and consist of degraded habitat, or that continue to receive secondary effects of adjacent human activities, they become more vulnerable to extirpation from naturally occurring events (see Factor E).

All habitat for *Polygonum hickmanii* is also threatened in general by the encroachment of nonnative grasses from the surrounding grasslands. Although several species of nonnative grass (*e.g., Vulpia myuros*) grow within the wildflower fields, these patches for the most part do not support the abundant growth of nonnative grasses (*Bromus* sp.) that occur on the adjacent, more mesic grassland habitat. These nonnative grasses on the mesic grasslands do not compete with *P. hickmanii* in the classic sense (competition for light, water, nutrients). However, the tall culms (stems) of nonnative grasses can physically drape over patches of wildflower field habitat, particularly the smaller patches, and deposit a mat of litter (thatch) that physically prohibits the species within the wildflower field from appearing. Because nonnative grasses and herbs produce more biomass than their native counterparts, they also produce more litter (Belknap *et al.* 2001). Although decomposition rates for nonnative species are likely no slower than those of native species, their faster rate of biomass production results in a greater accumulation of litter. Other cases of native species being overtaken by litter accumulation produced by nonnatives have been noted in desert ecosystems (Jayne Belknap, Biological Resources Division, pers. comm., 1998) and on the California Channel Islands (Rob Klinger, The Nature Conservancy, pers. comm., 1998).

In summary, habitat alteration and destruction, including urban development, road construction, and their attendant secondary impacts (including increased trampling from humans, pets, bicycles, and installation and maintenance of landscaped areas),

are threats to the species. These activities cause soil erosion, soil compaction, disturbance of the soil crust, changes in soil hydrology, changes in water quality, encroachment of nonnative species, and accumulation of thatch.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization or vandalism are not known to be threats to this species.

C. Disease or Predation

We found no evidence that disease is a factor affecting this species. Predation by cattle, livestock, or other wildlife species is not known to occur.

D. The Inadequacy of Existing Regulatory Mechanisms

Polygonum hickmanii currently receives no protection under Federal law, and it is not currently listed by the State of California.

Chorizanthe robusta var. *hartwegiana*, an endangered species, frequently occurs within the same wildflower field habitat as *Polygonum hickmanii*; however, in two locations *P. hickmanii* occurs without the former species. Even though *C. r.* var. *hartwegiana* was federally listed as endangered in 1994, and critical habitat was subsequently designated in 2002, these regulatory actions, and subsequent protections afforded the species and its habitat do not fully protect the frequently co-occurring *P. hickmanii* under the Act for several reasons. First, in context of a consultation under section 7 of the Act, because of the restricted distribution of *P. hickmanii* within the wildflower field habitat, there may be circumstances in which an action proposed by a Federal action agency may jeopardize the continued existence of *P. hickmanii* or destroy or adversely modify its critical habitat, while the same action may not result in jeopardy or adverse modification for *C. r.* var. *hartwegiana*. In addition, because of differences in phenology between the two species (flowering period in *P. hickmanii* is beginning when that of *C. r.* var. *hartwegiana* is ending), it is also possible that the timing of an activity (*e.g.*, grazing or spraying) could be a greater threat to one species than the other. Second, even though *P. hickmanii* shares the same wildflower field habitat with *C. r.* var. *hartwegiana*, it is possible that over time, the distribution of the two species among the wildflower field patches could shift, resulting in less overlap between the two species than is evident at this point in time. Thus, regulatory protections for *C. r.* var. *hartwegiana* may provide less protections for *P. hickmanii*. Third, because of the more restricted distribution of *P. hickmanii* and life history differences between the two plants, recovery actions implemented for *C. r.* var. hartwegiana may be inadequate to provide for the conservation of *P. hickmanii.*

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The lead agency is the public agency with primary authority or jurisdiction over the project, and that agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project potentially ''reduce(s) the number or restrict(s) the range of a rare or endangered plant or animal.'' Species eligible for, but not yet listed by the State as threatened or endangered, are given the same protection as those species officially listed by State or Federal governments. The Rare Plant Scientific Advisory Committee for the California Native Plant Society has determined that *Polygonum hickmanii* meets the criteria for being included on CNPS' ''List 1B.'' The plants on List 1B meet the definitions of section 1901, chapter 10 of the California Department of Fish and Game Code, and are therefore eligible for State listing. It is mandatory that plants on List 1B be fully considered during preparation of environmental documents relating to CEQA. Once significant effects are identified, the lead agency may require mitigation for effects through changes in the project, or the lead agency may decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Therefore, the protection of listed species through CEQA depends upon the discretion of the lead agency involved; however, findings of ''overriding considerations'' are infrequent.

Inclusion of mitigation measures in a project approved through the CEQA process does not guarantee that such measures are implemented. The recycled water distribution project approved by the Scotts Valley Water District included measures to avoid and mitigate impacts to sensitive resources, including those for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, grading for this project was initiated without implementing those measures, which resulted in a much narrower buffer zone left between the plant populations and the grading activity (Carl Wilcox, California Department of Fish and Game, *in litt.* 1999).

Certain local agencies are exempt from city and county regulations in accordance with chapter 1, paragraphs 53094 and 53096, of the State of California regulations on planning, zoning, and development laws (Governor's Office of Planning and Research 1996). The High School project for the Scotts Valley Unified School District is exempt from local permitting requirements; therefore, no permits or approvals were required from the City of Scotts Valley. Additionally, the recycled water distribution project for the Scotts Valley Water District is similarly exempted; therefore, no permits or approvals are required from either the City of Scotts Valley or the County of Santa Cruz. In July 1999, the Water District proceeded with road and tank pad grading for this project. This activity was initiated without fulfilling mitigation measures that called for sensitive areas to be flagged and fenced ahead of time, and resulted in grading that went beyond the scope of work for the project. Although the County of Santa Cruz notified the Water District that the additional grading was not exempted from applicable regulations, the only consequence is that the county has requested that the damaged areas be satisfactorily restored (Alvin James, County of Santa Cruz, *in litt.* 1999).

The establishment and implementation of a management plan for the preserve at the High School site does not provide for enforcement authority to maintain the physical integrity of the preserve.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The design of preserves and open spaces related to project mitigation to date has been insufficient to provide for the long-term conservation of *Polygonum hickmanii* and other sensitive species that occur in the wildflower fields in Scotts Valley. Additionally, the threat of random extinction is increased in small populations of limited distribution (please see the ''Random Extinction'' section below for further discussion).

Inadequate Preserve Design

The need for adequate preserve design has been discussed by many biologists (Jensen 1987; Shafer 1995; Rathcke and Jules 1993; Kelly and Rotenberry 1993). To increase the certainty that a species will persist over a given interval of time,

adequate habitat needs to be protected and land uses adjacent to the preserve need to be compatible with maintaining the integrity of the preserve. Habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species depends and have a ratio of edge to total area that minimizes fragmentation and edge effects.

Failure to protect sufficient habitat results in the eventual decline of the target species. Small preserves adjacent to urban areas have additional stress placed on them due to the need to manage a host of human-caused impacts. The increased stress urban wildland areas receive has been documented by many authors (Keeley 1993).

In the case of *Polygonum hickmanii* at the School District Preserve, the site remained unfenced and unsigned for several years, was subject to bicycle and heavy equipment traffic, and served as a repository for yard waste (C. Kelley, *in litt.* 1999). Local residents also have used the preserve for golf practice (Biotic Resources Group 2002). A management plan for the preserve was completed in 1998 (Wittwer, *in litt.* 2002). However, prescribed management actions are not always implemented according to schedule due to budget limitations.

Habitat fragmentation also affects plant-pollinator interactions in a number of ways. The abundance of specific pollinators may decline due to the elimination of nesting sites, decreases in food source plants due to changes in composition of the plant community, increases in competition from nonnative pollinators, and increases in the exposure to pesticides (Rathcke and Jules 1993; Jennersten 1988; Kearns and Inouye 1997). In plant species that are obligate outcrossers (those that require pollinators to effect seed development), reduced pollinator availability can result in limited seed production. Even if a plant species is not an obligate outcrosser, genetic variability within the plant population can be reduced with potentially deleterious long-term consequences (see discussion below on random extinction). We believe the effects of habitat fragmentation discussed above are similar to those that could affect the long-term persistence of the *Polygonum hickmanii*.

Ecological processes that would be important to maintain within preserve areas for *Polygonum hickmanii* include, but are not limited to, the integrity of edaphic (soil) conditions, hydrologic processes (surface flows), the associated ''wildflower field'' plant community, plant-pollinator interactions, and seed dispersal mechanisms. Maintaining such processes will be severely compromised by the small size of the areas being set aside as preserves or open spaces, the extent of edge subject to external influences, and the particular kinds of adjacent land use to which the preserves will be subject. Threats resulting from alteration of habitat due to adjacent changes in land use (discussed in Factor A) are exacerbated by the small size of the preserves and the proximity of nearly all of the colonies to the edges of the preserves or open spaces, or to roads. Distances of less than 24 m (80 ft) are not considered to be effective at buffering from chemical pollutants (*e.g.*, herbicides, pesticides, and other contaminants) (Conservation Biology Institute (CBI) 2000). Depending on site configuration or circumstances, buffers of up to 91 m (300 ft) may not be adequate to provide sufficient buffering from invasive animals and increased fire frequency (CBI 2000) .

Random Extinction

This species is considered to have a high risk of extinction in the wild in the immediate future based on criteria put forth by the World Conservation Union, as modified for plants (Keith 1998). Species with few populations and individuals are vulnerable to the threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, or the landscape level. Decrease in genetic variability will reduce the likelihood that individuals in a population will persist in a changing environment. Additionally, populations with lower levels of genetic diversity are more likely, on average, to experience reduced reproductive success due to inbreeding depression. Species with few populations or those that are low in number may be subject to forces at the population level that affect their ability to complete their life cycles successfully. For example, reduced numbers of individuals may lead to a reduction in number of pollinators and subsequently seed set. Additionally, if the host plants are partially self-incompatible, reduction in population size may lead to increased self-pollination and may reduce the level of genetic variability. At the landscape level, random natural events, such as storms, drought, or fire, could destroy a significant percentage of individuals or entire populations; a hot fire could destroy a seedbank as well. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events.

The genetic characteristics of *Polygonum hickmanii* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *P. hickmanii* being vulnerable to extinction for these reasons is unknown. However, random events operating at the population and landscape levels clearly have the potential for increasing the chance of extinction for *P. hickmanii.*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining the actions to take in this rule. Based on this evaluation, the appropriate action is to list *Polygonum hickmanii* as endangered. The species is threatened with extinction due to habitat alteration resulting primarily from urban development, inadequate preserve design, and vulnerability to naturally occurring events due to low numbers of individuals and occupied acreage of the entire taxon. All of the colonies are on private lands. Although conservation efforts have been prescribed as part of mitigation for two of the three projects (high school and recycled water distribution project), and are expected to be proposed for the third project (Polo Ranch development), the small extent of occupied habitat, small colony sizes, and imminent threats lessen the chance that such efforts will lead to secure, self-sustaining colonies at these sites.

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also

requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat except in those circumstances determined by the Secretary. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not also be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the Act's section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of *Polygonum hickmanii*. This information included data from the CNDDB 2000, geologic and soil survey maps (USGS 1989, SCS 1979), geologic information contained in project documents (Impact Sciences 1998, 2000), recent biological surveys and reports, our multi-species recovery plan for the Santa Cruz Mountatins that provided conservation recommendations for *Polygonum hickmanii*, additional information provided by interested parties, and discussions with botanical experts. We also conducted multiple site visits to the two locations that are being designated as critical habitat.

In addition to the above, we also reviewed the goals for *Polygonum hickmanii* included in our multi-species recovery plan, which addresses this species and other taxa from the Santa Cruz Mountains (Service 1998). The plan included the following conservation recommendations: (1) Secure and protect habitat for *Polygonum hickmanii* through habitat conservation plans (HCPs), conservation easements, or acquisition; (2) manage habitat for the species through such actions as controlling nonnative species, reducing impacts from recreation, restoring degraded sites, and monitoring regularly; (3) learn more about the life history, ecology, and population dynamics of the species that will contribute to developing appropriate management strategies; (4) increase public awareness of the species and its associated habitats through various outreach efforts; and (5) use an adaptive management approach to revise management strategies over time. Critical habitat alone is not expected to recover the species, and it is only one of many strategies that can assist in such recovery.

Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The distribution of *Polygonum hickmanii* appears to be more closely tied to the presence of the Santa Cruz mudstone and Purisima soils than to specific plant communities; the plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may or may not favor the growth of *P. hickmanii* above ground; (2) the way the current distribution of *P. hickmanii* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site every year, it would be difficult to quantify what proportion of each critical habitat unit may actually be occupied by *P. hickmanii*. Therefore, within the grassland habitat, patches of unoccupied habitat are interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our

critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms. Other areas, specifically the steeper slopes above the occurrences of *P. hickmanii*, and including non-grassland areas that extend up to the ridgelines, are necessary to maintain the hydrologic and edaphic characteristics of the wildflower field patches where *P. hickmanii* is found.

Summary of Changes From the Proposed Critical Habitat Designation

Based on a review of public comments received on the proposed designation of critical habitat, we reevaluated our proposal and made several changes to the final designation of critical habitat. These changes include the following:

(1) The description of the primary constituent elements was modified and clarified. One peer reviewer suggested expanding the list of primary constituent elements; we did not believe it was appropriate to do so (see comment 2 in Summary of Comments above). However, we did incorporate some of the additional elements suggested by the peer reviewer and included discussion of them as features of the landscape that need special management or protections. In the third primary constituent element (''grassland plant community that supports the wildflower field habitat that is stable over time''), we removed the reference to nonnative species being absent or at low densities in recognition that such areas, even if they contain nonnative species, may have the potential to be restored so as to support *Polygonum hickmanii* in the future. Two other primary constituent elements (pollinator activity between existing colonies of *P. hickmanii*, and seed dispersal mechanisms between existing colonies and other potentially suitable sites) were removed as individual primary constituent elements. Instead, these two elements were added into primary constituent element #3. We did this because we think it more accurately portrays the role of pollinators and seed dispersers as integrated parts of a healthy plant community that could support *P. hickmanii*, rather than as elements whose absence would lead the public to conclude that an area was not critical habitat.

(2) One primary constituent element (''physical processes * * * that support natural dune dynamics'') was erroneously included in the proposed rule; it has been removed from this final rule.

(3) We added a section describing the Special Management Needs or Protections that *Polygonum hickmanii* may require. We believe that this new section will assist land managers in developing strategies for conservation and protection of *P. hickmanii* on lands they manage.

(4) We made revisions to the boundary lines on both critical habitat units. The purpose of these changes was to remove areas that do not contain the primary constituent elements. The use of recently acquired high-resolution aerial photographs (April 2000) enabled us to more precisely map critical habitat. These changes reduced the Glenwood Unit by 4 percent (3 ha, 8 ac). The Polo Ranch Unit was reduced 15 percent (5 ha, 13 ac) by eliminating some of the riparian gallery forest at the western edge of the unit that borders Carbonero Creek and does not support any of the primary constituent elements.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Polygonum hickmanii* is described in the Background section of this final rule. Based on the best available information at this time, we believe the long-term probability of the conservation of *P. hickmanii* is dependent upon the protection of existing population sites and the maintenance of ecological functions within these sites, including connectivity between colonies within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example, fire disturbance) that contribute to the openness of plant cover upon which the species depends. In addition, the small range of this species makes it vulnerable to edge effects from adjacent human activities, including disturbance from trampling and recreational use, the introduction and spread of nonnative species, and the application of herbicides, pesticides, and other contaminants (Conservation Biology Institute 2000).

The primary constituent elements of critical habitat for *Polygonum hickmanii* are:

(1) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(2) ''Wildflower field'' habitat that has developed on these thin-soiled sites;

(3) A grassland plant community that supports the ''wildflower field'' habitat and that supports the pollinator activity and seed dispersal mechanisms that typically occur within the grassland plant community;

(4) Areas around each colony to allow for recolonization to adjacent suitable microhabitat sites;

(5) Habitat within the subwatersheds upslope to the ridgelines to maintain the edaphic and hydrologic conditions and slope stability that provide the seasonally wet substrate for growth and reproduction of *P. hickmanii.*

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Polygonum hickmanii* within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecologic processes may be sufficient to ensure that populations of *P. hickmanii* are maintained at those sites and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *P. hickmanii.* We have outlined below the most likely kinds of special management and protection that *P. hickmanii* may require.

(1) The soils on which *Polygonum hickmanii* is found should be maintained to optimize conditions for its persistence. Physical properties of the soil, such as its chemical composition, surface crust, and drainage capabilities, would best be maintained by limiting or restricting the use or application of herbicides, fertilizers, or other soil amendments.

(2) Overspray from irrigation or saturation of soils beyond the normal rainfall season should also be avoided,

as this may alter the structure and composition of the grassland community or render the native species more vulnerable to pathogens found in wetter soil regimes.

(3) The associated plant communities must be maintained to ensure that the habitat needs of pollinators and seed dispersal agents are maintained. The use of pesticides should be limited or restricted so that healthy populations of pollinators are present to effect pollination and, therefore, seed set in *Polygonum hickmanii.* The fragmentation of habitat through construction of roads and certain types of fencing should be limited so that dispersal agents may disperse seed of *P. hickmanii* throughout the unit.

(4) Invasive, nonnative species such as brome grasses and other species may need to be actively managed within the grassland community to maintain the patches of open habitat that *Polygonum hickmanii* needs.

(5) Certain areas where *Polygonum hickmanii* occurs may need to be fenced to protect it from accidental or intentional trampling by humans and livestock. While *P. hickmanii* appears to withstand light to moderate disturbance, heavy disturbance may be detrimental to its persistence. Seasonal exclusions may work in certain areas to protect *P. hickmanii* during its critical season of growth and reproduction.

Criteria Used To Identify Critical Habitat

To delineate the critical habitat units, we selected areas that provide for the conservation of *Polygonum hickmanii* at the only two sites where it is known to occur, additional suitable habitat, and habitat upslope of these areas to the ridgeline of the subwatersheds. The current range of the species suggests that part of its former range was destroyed by urban development. Additionally, the remaining range of the species is highly restricted, with standing plants currently growing on less than 0.4 ha (1 ac) of land. We believe it is essential to the conservation of the species to preserve all areas that currently support native populations of *P. hickmanii* because the current range of the species is so restricted. However, habitat is not restricted solely to the area where standing individuals can be observed. Habitat for the species must include an area that is large enough to maintain the ecological functions upon which the species depends (*e.g.*, the hydrologic and edaphic conditions for seed germination and establishment, pollinators, and seed dispersers). We believe it is important to designate an area of sufficient size to allow landscape scale processes to continue that maintain the patches of wildflower field habitat and to minimize the alteration of habitat, such as invasions of nonnative species and recreation-caused erosion, that result from human occupancy and human activities occurring in adjacent areas.

We delineated the critical habitat units by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Polygonum hickmanii* using information from the California Natural Diversity Data Base (CNDDB 2000) and the other information sources listed in the Methods section above. These data layers were created on a base of USGS 7.5′ quadrangle maps obtained from the State of California's Stephen P. Teale Data Center. Because the areas within proposed critical habitat boundaries were portions of the San Augustin Spanish Land Grant, they have not been surveyed according to the State Plan Coordinate System. Therefore, instead of defining proposed critical habitat boundaries using a grid of township, range, and section, we defined the boundaries for the proposed critical habitat units using known landmarks and roads.

During preparation of the final rule, we found several discrepancies between the legal description of the boundaries of the critical habitat units and the boundaries of the units as depicted in the maps accompanying the proposed rule. The discrepancies resulted primarily through our use of data layers created at a small scale (for example 1:100,000 scale USGS mapping) during preparation of the maps of the proposed critical habitat. For the final rule, we corrected the mapped boundaries of critical habitat first to be consistent with the boundaries as described in the proposed rule. We then modified the boundaries of proposed critical habitat using information on the location of existing developed areas from recent (April 2000) aerial imagery, additional information from botanical experts, and comments on the proposed rule. The boundaries of the final critical habitat units are defined by Universal Transverse Mercator (UTM).

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as housing developments, which are unlikely to contribute to the conservation of *Polygonum hickmanii.* We attempted to map critical habitat for the final rule in sufficient detail to exclude developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *P. hickmanii.* Some other areas within the boundaries of the mapped units, such as roads, parking lots and other paved areas, lawns, and other urban landscaped areas, will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation under the Act, unless they affect the species or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The critical habitat units described below constitute our best assessment at this time of the areas essential for the species' conservation. Critical habitat for *Polygonum hickmanii* is being designated at the only two sites where it is known to occur. Both units are currently occupied with known occurrences of *P. hickmanii.* These areas provide the essential life cycle needs of the species and the habitat components essential for the conservation of *P. hickmanii.* The two units are primarily within the city limits of Scotts Valley in Santa Cruz County with a small portion within an unincorporated area of Santa Cruz County, California, and include the grassland habitat that contains the ''wildflower field'' patches on which the species depends. Given the threats to the habitat of *P. hickmanii* discussed above, we believe that these areas are likely to require special management considerations and protection.

Because we consider maintaining hydrologic and edaphic conditions so important in these grasslands, the critical habitat area extends outward to the following limits—(1) Upslope from the occurrences of *P. hickmanii* to include the upper limit of the immediate watershed; (2) downslope from the occurrences of *P. hickmanii* to the point at which grassland habitat is replaced by forest habitats (oak forest, redwood forest, or mixed conifer-hardwood forest); and (3) to the boundary of existing development.

Including the upper limit of the watershed highlights the importance of maintaining stability of the slopes above the habitat of the species, because soil disturbing activities in this area could result in erosion and deposition of soils on top of wildflower field habitat, and could also lead to a change in the flow of surface and subsurface water downslope, which could change the amount and timing of water availability to the wildflower field habitat. Including habitat downslope from the wildflower field habitat likewise highlights the importance of maintaining edaphic and hydrologic conditions below the wildflower field patches, because soil disturbing activities in this area could also result

in erosion and removal of soils which could cause destabilization of slopes where the wildflower field patches are located.

Unit Descriptions

We are designating the following general areas as critical habitat (see legal descriptions for exact critical habitat boundaries).

Unit 1: Glenwood Site

Unit 1 consists of approximately 87 ha (214 acres) to the west of Glenwood Drive and north and northwest of Casa Way, in the city of Scotts Valley. This unit includes land owned and managed by the Salvation Army and by the Scotts Valley High School District as a preserve, but excludes the rest of the High School, and land to the east of Glenwood Drive, encompassing the parcel known as the Glenwood Development. Most of the land being designated within this unit is privately owned, with a small portion (4 ha (9 ac)) owned by a local agency (High School District). This unit is essential because it supports approximately 25 to 50 percent of the known above-ground numbers of individuals of *Polygonum hickmanii,* as well as other suitable patches of wildflower field habitat that could be colonized by the species naturally, or used as introduction sites as part of a recovery effort. Much of this suitable, but unoccupied habitat, is slated to be dedicated as ''open space'' as part of the housing development on the Glenwood parcel; therefore, an opportunity may exist to pursue such a recovery effort. The unit also supports intervening habitat that includes the grassland community that supports the pollinators and seed dispersers that are important to the survival and conservation of *P. hickmanii.* Additional habitat that is unsuitable for *P. hickmanii* is also included on the slopes above the wildflower field patches; this additional habitat is necessary to maintain the slope stability and therefore the hydrologic and soil conditions suitable for *P. hickmanii* and the wildflower field habitat.

Unit 2: Polo Ranch Site

The Polo Ranch site consists of approximately 30 ha (73 ac) to the east of Carbonera Creek on the east side of Highway 17 and north and northeast of Navarra Drive, in the city of Scotts Valley, in Santa Cruz County, California. All land being designated as critical habitat is privately owned. This unit is essential because it supports approximately 50 to 75 percent of the known above-ground numbers of individuals of *Polygonum hickmanii,* as well as other suitable patches of wildflower field habitat that could be colonized by the species naturally, or used as introduction sites as part of a recovery effort. The unit also supports intervening habitat that includes the grassland community necessary for pollinators and seed dispersers that are responsible for maintaining genetic variability within the species. Additional habitat that is unsuitable for the growth of *P. hickmanii* is also included on the slopes above the wildflower field patches; this additional habitat is necessary to maintain the slope stability and therefore the hydrologic and soil conditions suitable for *P. hickmanii.* Much of the unsuitable habitat will be set aside as ''open space'' as part of the pending housing development, because these slopes are too steep to safely support housing construction.

TABLE 1.—APPROXIMATE CRITICAL HABITAT AREA (HA (AC)) AND LAND OWNERSHIP.

[1 ha = 2.47 ac]

Unit name	Local agency	Private	Total
Glenwood Unit	4 ha (9 ac)	83 ha (205 ac)	87 ha (214 ac)
Polo Ranch Unit	0 ha (0 ac)	30 ha (73 ac)	30 ha (73 ac)
Total	4 ha (9 ac)	113 ha (278 ac)	117 ha (287 ac)

Estimates reflect the total area within critical habitat unit boundaries. Approximate hectares have been converted to acres.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that we develop and implement recovery plans for all listed species unless we find that such a plan will not promote the conservation of the species. Together with our partners, we would initiate such appropriate recovery actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed to be listed or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Activities on private lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, would be subject to the section 7 of the Act consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted, would not require section 7 consultation.

Listing of this plant would authorize development of a recovery plan. However, in the case of *Polygonum*

hickmanii, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Since *P. hickmanii* is being listed with the publication of this final rule, we intend that the conservation recommendations included in this multi-species recovery plan will, in effect, become the recovery plan for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce the species, or to remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of endangered plants on Federal lands is prohibited, although in appropriate cases, a Federal endangered species permit may be issued to allow for collection. However, *Polygonum hickmanii* is not presently known to occur on Federal land. Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Effects of Critical Habitat Designation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Polygonum hickmanii* or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 of the Act consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 of the Act consultation.

Both of the units we are designating are considered to be occupied by either standing *Polygonum hickmanii* plants or a seed bank, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Therefore, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as section 404 of the Clean Water Act permits from the U.S. Army Corps of Engineers;

(2) Restoration projects sponsored by the Natural Resources Conservation Service; and

(3) Pest control projects undertaken by the Animal and Plant Health Inspection Service, permits from Housing and Urban Development, or authorization of Federal grants or loans.

Such activities would be subject to the section 7 of the Act consultation process. Where federally listed wildlife species occur on private lands proposed for development, any HCPs submitted by the applicant to secure an incidental take permit according to section 10(a)(1)(B) of the Act would be subject to the section 7 of the Act consultation process. The Ohlone tiger beetle (*Cicindela ohlone*), a federally endangered species, occurs in close proximity to *C. r.* var. *hartwegii* within grasslands on the east side of Carbonero Creek on the Glenwood Development parcel. We anticipate that an HCP will be developed to cover incidental take for the tiger beetle and will address conservation measures for *C. r.* var. *hartwegii* as well as *Polygonum hickmanii* during development of the management plan for the open space portion of the parcel.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Polygonum hickmanii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain natural grassland communities and the wildflower field habitat. Such activities adverse to *Polygonum hickmanii* could include, but are not limited to: Vegetation manipulation, such as chaining or harvesting timber in the watershed upslope from *P. hickmanii*; maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture (the cultivation of grapes), row crops, and livestock grazing; and

(2) Activities that appreciably degrade or destroy native grassland communities, including, but not limited to, livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

If you have questions about whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include *Polygonum hickmanii* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although the Act only prohibits take of listed wildlife species, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Polygonum hickmanii* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *P. hickmanii.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for lands essential for the long-term conservation of *P. hickmanii.* Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area

as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on November 21, 2002. We accepted comments on the draft analysis until December 6, 2002.

Our draft economic analysis evaluated the potential future effects of *Polygonum hickmanii* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on private landowners carrying out development activities funded or authorized by a Federal agency.

Based on our economic analysis, we concluded that the designation of critical habitat would not result in a significant additional regulatory burden above and beyond that attributable to the listing of *Polygonum hickmanii.* Our economic analysis does take into account that unoccupied habitat is being designated and that there may be some cost associated with new section 7 consultations that would not have occurred but for critical habitat being designated. Our economic analysis also recognizes that there may be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be temporarily lowered due to perceived increase in the regulatory burden. However, we believe these impacts will be short-term or minimal in cost.

In the final economic analysis, we conclude that, over the next 10 years the total costs to all landowners attributable to the designation are expected to be approximately $11,000 to $36,000 annually. However, we anticipate the costs will be even less because the costs of preparing Environmental Impact Reports for proposed developments, which were figured into the estimates, would have already been prepared to satisfy California Environmental Quality Act requirements for the lead State agency.

The values presented above may be an overestimate of the potential economic effects of the designation because the analysis includes a number of assumptions about the likelihood of future section 7 of the Act consultations, Environmental Impact Report preparation costs, and the costs involved in project modifications. Please see the economic analysis and final addendum for more information. Furthermore, the final designation has been reduced to encompass 117 ha (287 acres) versus the 125 ha (308 ac) proposed as critical habitat, a difference of approximately 8 ha (21 ac), that may reduce the economic effects of the designation.

A copy of the final economic analysis with supporting documents are included in the supporting record for this rulemaking and may be obtained by contacting our Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Polygonum hickmanii* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.*, 175 F.3d 1027, (D.C. Cir. 1999))

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Residential development on private land constitutes the primary activity expected to be impacted by the designation of critical habitat for *Polygonum hickmanii.*

To be conservative (*i.e.*, more likely overstate impacts than understate them), the economic analysis assumed that the two potentially affected parties (American Dream/Glenwood and Lennar/Graystone Homes) that may be engaged in development activities within critical habitat are small entities. There are approximately 35 small residential development and construction companies in Santa Cruz County. At most two formal consultations could arise involving private entities. Therefore, the economic analysis assumes that at most two separate residential/small business entities may be affected by the designation of critical habitat for *Polygonum hickmanii* over 10 years.

Under the reasonable assumption that the two consultations would be spread out over the 10-year period, less than 1 percent of residential development and construction companies may be affected annually, on average, by the designation of critical habitat for the *Polygonum hickmanii*. Consequently, the economic analysis concludes that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for *P. hickmanii*.

In general, two different mechanisms in consultations under section 7 of the Act could lead to additional regulatory requirements for the one small business, on average, that may be required to consult with us each year regarding their project's impact on *Polygonum hickmanii* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in destruction or adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or destruction or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Polygonum hickmanii*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in this final listing rule and critical habitat designation.

It is likely that a developer could modify a project to avoid removing standing plants. Based on the types of modifications that have been implemented in the past for plant species, a developer may take such steps as installing fencing to protect existing colonies of plants, re-aligning the project to avoid sensitive areas, continuation of current grazing practices or establishment of new management provisions to ensure containment of nonnative exotic species that threaten *Polygonum hickmanii*, and or restrictions of certain recreation uses to avoid disruption of normal propagation of the species. As determined in our economic analysis, the cost for implementing these modifications for one project may range from $11,000 to $55,000. It should be noted that developers likely would already be required to undertake such modifications due to regulations in CEQA. These modifications are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities and have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Polygonum hickmanii* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that

this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs involving Federal funds, permits, or other authorized activities will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. There are no energy-related facilities located within designated critical habitat. This rule is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Polygonum hickmanii* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Polygonum hickmanii*, as well as unoccupied areas, would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this designation and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 of the Act consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Polygonum hickmanii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Polygonum hickmanii* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary author of this final rule and critical habitat designation is Constance Rutherford, Ventura Fish and Wildlife Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h), by adding an entry for *Polygonum hickmanii* in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
*	*	*	*	*	*	*	
Polygonum hickmanii	Scotts Valley polygonum.	U.S.A. (CA)	Polygonaceae	E	736	17.96(a)	NA
*	*	*	*	*	*	*	

■ 3. Amend § 17.96(a) by adding a critical habitat for Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum) in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum)

(1) Critical habitat units are depicted for Santa Cruz County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Polygonum hickmanii* are the habitat components that provide:

(i) Thin soils in the Bonnydoon series that have developed over outcrops of Santa Cruz mudstone and Purisima sandstone;

(ii) ''Wildflower field'' habitat that has developed on these thin-soiled sites;

(iii) A grassland plant community that supports the ''wildflower field'' habitat and that supports the pollinator activity and seed dispersal mechanisms that typically occur within the grassland plant community;

(iv) Areas around each colony to allow for recolonization to adjacent suitable microhabitat sites; and

(v) Habitat within the subwatersheds upslope to the ridgelines to maintain the edaphic and hydrologic conditions and slope stability that provide the seasonally wet substrate for growth and reproduction of *Polygonum hickmanii*.

(3) Existing features and structures, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Unit 1: Santa Cruz County, California. From USGS 7.5′ quadrangle map Felton, California, Mount Diablo Meridian, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 587990, 4103190; 587999, 4103220; 588021, 4103230; 588025, 4103250; 587997, 4103260; 588025, 4103280; 588035, 4103290; 588033, 4103310; 588025, 4103320; 588012, 4103330; 588014, 4103340; 588005, 4103350; 587984, 4103360; 587969, 4103370; 587962, 4103380; 587958, 4103390; 587962, 4103400; 587975, 4103410; 587992, 4103410; 588012, 4103420; 588029, 4103400; 588046, 4103410; 588058, 4103420; 588064, 4103430; 588072, 4103450; 588082, 4103480; 588088, 4103500; 588091, 4103530; 588091, 4103560; 588099, 4103570; 588115, 4103590; 588146, 4103580; 588169, 4103610; 588201, 4103630; 588272, 4103700; 588411, 4104050; 588571, 4103930; 588584, 4103940; 588589, 4103960; 588590, 4103980; 588583, 4104010; 588574, 4104030; 588559, 4104050; 588549, 4104070; 588568, 4104110; 588833, 4104150; 588827, 4104020; 588883, 4104030; 588891, 4103950; 588906, 4103920; 588931, 4103890; 588979, 4103870; 589049, 4103870; 589069, 4103680; 589061, 4103450; 589124, 4103440; 589173, 4103400; 589117, 4103050; 589062, 4103060; 589019, 4102960; 589099, 4102940; 589096, 4102920; 588612, 4103020; 588570, 4102880; 588485, 4102900; 588474, 4102960; 588452, 4102960; 588452, 4103090; 588473, 4103160; 588502, 4103270; 588504, 4103330; 588505, 4103420; 588402, 4103470; 588360, 4103480; 588292, 4103480; 588267, 4103440; 588121, 4103320; 588033, 4103080; 588352, 4103020; 588337, 4102930; 588000, 4102990; 587981, 4102940; 587900, 4102940; 587900, 4102960; 587905, 4102980; 587919, 4102970; 587931, 4102970; 587932, 4102990; 587924, 4103010; 587916, 4103040; 587915, 4103060; 587893, 4103070; 587887, 4103090; 587883, 4103100; 587885, 4103100; 587891, 4103110; 587911, 4103100; 587939, 4103130; 587942, 4103150; 587951, 4103160; 587963, 4103150; 587977, 4103160; 587990, 4103190.

(5) Unit 2: Santa Cruz County, California. From USGS 7.5′ quadrangle map Laurel, California, Mount Diablo Meridian, California. Lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 589297, 4102370; 589213, 4102420; 589164, 4102430; 589168, 4102460; 589174, 4102500; 589181, 4102550; 589189, 4102570; 589210, 4102600; 589243, 4102620; 589261, 4102630; 589274, 4102640; 589271, 4102660; 589270, 4102680; 589270, 4102690; 589289, 4102710; 589327, 4102740; 589361, 4102770; 589402, 4102790; 589435, 4102800; 589472, 4102800; 589571, 4102790; 589657, 4102780; 589762, 4102770; 589845, 4102750; 589889, 4102730; 589917, 4102690; 589932, 4102660; 589932, 4102620; 589930, 4102530; 589865, 4102440; 589732, 4102250; 589681, 4102260; 589669, 4102290; 589661, 4102300; 589642, 4102310; 589623, 4102310; 589590, 4102310; 589531, 4102320; 589297, 4102370.

(6) Map for Units 1 and 2 follows:

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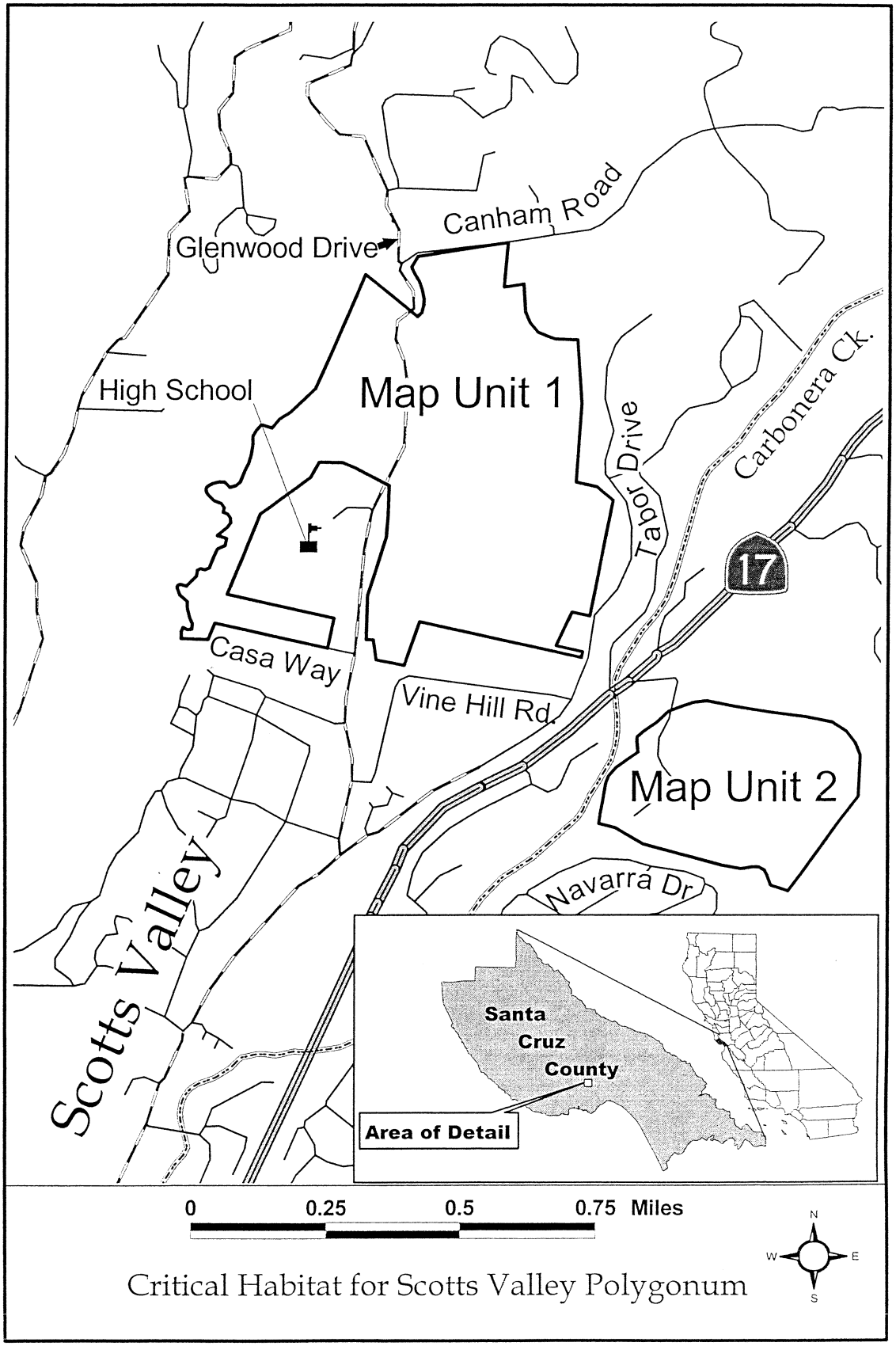

Critical Habitat for Scotts Valley Polygonum

* * * * *

Dated: March 27, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8181 Filed 4–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 032803E]

Fisheries of the Exclusive Economic Zone Off Alaska; AtkaMackerel and Pacific Cod With Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures and openings.

SUMMARY: NMFS announces opening and closing dates of the first and second directed fisheries for Atka mackerel within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to fully use the 2003 HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2003 Atka mackerel total allowable catch (TAC). NMFS also prohibits directed fishing for Pacific cod by vessels using trawl gear in the HLA.

DATES: Prohibition of directed fishing for Pacific cod with trawl gear in area 542 HLA and area 543 HLA: Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2003, until 1200 hrs, A.l.t., April 11, 2003. The first directed fisheries for Atka mackerel in the HLA in area 542 and area 543 open: Effective 1200 hrs, A.l.t., April 8, 2003, until 1200 hrs, A.l.t., April 9, 2003. The second directed fisheries for Atka mackerel in the HLA in area 542 and area 543 open: effective 1200 hrs, A.l.t., April 10, 2003, until 1200 hrs, A.l.t., April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (68 FR 2922, January 22, 2003).

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA portion of the Atka mackerel TAC in areas 542 and 543 are 8,147 mt and 5,547 mt, respectively (68 FR 9907, March 3, 2003). The HLA directed fisheries for Atka mackerel were previously opened and closed (68 FR 2920, January 22, 2003) based on the HLA apportionments of the interim specifications of groundfish (67 FR 78739, December 26, 2002). NMFS has determined that as of March 25, 2003, the remaining amounts of the Atka mackerel HLA limits are 2,496 mt in the 542 HLA limit and 1,894 mt in the 543 HLA limit.

In order to fully utilize the 2003 HLA limit for areas 542 and 543 and pursuant to § 679.20(a)(8)(iii)(C), NMFS is reopening the first and second directed fisheries for Atka mackerel for the dates and times listed under the **DATES** section of this notice.

In accordance with § 679.20(a)(8)(iii)(D) and based on the amounts of the HLA limits currently available and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limits for each HLA directed fishery in areas 542 and 543 are: 1,248 mt for the first directed fishery in area 542, 947 mt for the first directed fishery in area 543, 1,248 mt for the second directed fishery in area 542, and 947 mt for the second directed fishery in area 543.

In accordance with § 679.20(a)(8)(iii)(E), the Administrator, Alaska Region, NMFS, has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed under the **DATES** section of this notice.

In accordance with § 679.22(a)(8)(iv)(A), directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited in the HLA in area 542 or area 543, as defined in § 679.2, when the Atka mackerel HLA directed fishery in area 542 or area 543 is open. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the HLA in area 542 and area 543 as defined in accordance with the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fisheries, lead to exceeding the HLA limits, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8543 Filed 4–3–03; 2:21 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 040203B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 3, 2003, through 1200 hrs, A.l.t., August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the pollock TAC in Statistical Area 620 of the GOA is 7,778 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B) the Administrator, Alaska Region, NMFS (Regional Administrator) hereby increases the B season pollock TAC by 1,484 mt, the amount of the A season pollock allowance in Statistical Area 620 that was not previously taken in the A season. The revised B season allowance of pollock TAC in Statistical Area 620 is therefore 9,262 mt (7,778 mt plus 1,484 mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the revised B season allowance of the pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,062 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the B season allowance of the pollock TAC in Statistical Area 620, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8544 Filed 4–3–03; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 91, 95, 97, 121, 125, 129, and 135

[Docket No. FAA–2002–14002; Notice No. 02–20]

RIN 2120–AH77

Area Navigation (RNAV) and Miscellaneous Amendments; Partial Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); partial reopening of comment period.

SUMMARY: This action reopens the comment period for portions of an NPRM that was published December 17, 2002. In that document, the FAA proposed to amend its regulations to reflect technological advances that support area navigation (RNAV); make certain terms consistent with those of the International Civil Aviation Organization; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. This reopening is a result of requests from the regulated public to extend the comment period of the proposal.

DATE: Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–14002, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Lawrence Buehler, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this rulemaking action. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** of April 11, 2000 (65 FR 19477–19478), or you may visit *http://dms.dot.gov.*

Before acting on this rulemaking action, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this rulemaking in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On December 17, 2002 (67 FR 77326; Dec. 17, 2002), the FAA issued a proposed rule entitled, ''Area Navigation (RNAV) and Miscellaneous Amendments.'' The comment period closed January 31, 2003. The changes were proposed to facilitate the transition from ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System (NAS).

Today's Action

The FAA has received requests to extend the comment period from Aeronautical Radio Inc., Airline Dispatchers Federation, the Air Transport Association, Alaska Airlines, Boeing, Continental Airlines, Delta Air Lines, Northwest Airlines, the Regional Airline Association, United Parcel Service, and the Aircraft Owners and Pilots Association. Each organization stated that it needed additional time to review the NPRM and formulate its responses. The FAA has also received comments on the proposed amendments to communications and navigation equipment requirements, and instrument approach procedure terminology. These particular comments were substantive and reflected significant public interest in the many areas of the proposed amendments. Based on these considerations, the FAA has determined that it is in the public interest to reopen the comment period for certain portions of the NPRM. However, for reasons discussed below, this docket will remain closed for comments addressing the following proposed amendments:

Part 1—Definitions and Abbreviations, under § 1.1 General definitions, the terms ''Air Traffic Service (ATS) route,'' ''Area navigation (RNAV),'' ''Area navigation (RNAV) route,'' and ''Route segment.''

Part 71—Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas; Air Traffic Service Routes; and Reporting Points, §§ 71.11, 71.13, 71.15, 71.73, 71.75, 71.77, and 71.79.

Part 95—IFR Altitudes, § 95.1.

Part 97—Standard Instrument Procedures, § 97.20.

The FAA has issued a separate final rule with request for comments for these proposed amendments. The separate final rule with request for comment is in today's **Federal Register**. The separate rule action will enable the FAA to proceed with the design and development phase of a high altitude RNAV route structure. The FAA believes that these amendments can be adopted separately without adverse impact on the continuing rulemaking process on the remaining proposed amendments in the NPRM.

The FAA has decided to accommodate the requests to reopen and extend the comment period. Based on the number of requests for extension, the FAA believes that the additional time is necessary for the public to fully analyze and comment on the proposed amendments.

Conclusion

In accordance with 14 CFR 11.47(c), the FAA has reviewed the requests for an extension of the comment period on ''Area Navigation (RNAV) and Miscellaneous Amendments'' published in the **Federal Register** December 17, 2002, and grants the requests in part.

Except as explained above and separately in this issue of the **Federal Register**, the comment period for the proposed RNAV operations and equipment provisions is reopened for an additional 90-day period until July 7, 2003.

Issued in Washington, DC, on March 28, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–8287 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 030220035–3035–01]

RIN 0648–AQ55

Policies and Procedures Concerning Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The proposed rule will amend NOAA's policies and procedures regarding space-based data collection systems (DCS) to allow expanded use of the NOAA DCS for government interests and to permit greater flexibility in utilizing these vital U.S. data collection assets in support of homeland security, National security, law enforcement, and humanitarian operations.

DATES: Submit comments on or before May 8, 2003.

ADDRESSES: Written comments on the proposed rule should be sent to: Kay Metcalf, NOAA, NESDIS, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304.

FOR FURTHER INFORMATION CONTACT: Kay Metcalf at (301) 457–5681, e-mail: *Kay.Metcalf@noaa.gov;* or Glenn Tallia at 301–713–1337, e-mail: *Glenn.E.Tallia@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA enacted 15 CFR Part 911, effective June 5, 1998, to revise its policies and procedures for authorizing the use of the space-based DCS that operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and on its Polar-orbiting Operational Environmental Satellites (POES). For general background on NOAA DCS, refer to the notice of final rulemaking published in the **Federal Register** on May 6, 1998, at 63 FR 24917.

The current regulations enacted in 1998 revised the policy on the use of the GOES DCS and formalized a new policy for the use of the Argos Data Collection and Location System (Argos DCS) which flies on the POES. There are two fundamental principles underlying NOAA's DCS rule: (1) The Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill user's requirements; and (2) NOAA DCS will be used predominantly for environmental applications.

The current regulations provide for non-environmental use of the Argos DCS in two instances: (1) Episodic uses, where there is the significant possibility of loss of life, which is consonant with NOAA's (and all U.S. Government agencies') inherent public safety mission; and (2) for government users and for non-profit users where there is a governmental interest, particularly in instances where the use of commercial services is not appropriate due to the sensitive nature of the applications (such as for National security or law enforcement purposes). Non-environmental use of the Argos DCS is limited to no more than five percent of the system's total use.

Explanation of Changes

The tragic events of September 11, 2001, precipitated a need to provide more flexibility in utilizing these vital United States data collection assets in support of homeland security, National security, law enforcement and humanitarian operations. The proposed changes will facilitate the expanded use of the NOAA DCS for government interests in these areas.

Nonetheless, the proposed revisions do not change the underlying policy that the use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available to meet the users' requirements. Furthermore, there will be no change in the general policy that the NOAA DCS will be used predominantly for environmental applications and that any exceptions to the general policy will be closely monitored by NOAA.

A subcategory of non-environmental use termed ''sensitive use'' would be established and will be inserted as new subsection 911.3(p). This new subcategory would be added to address those situations where the user is either a governmental entity or a non-profit organization with a governmental interest, and where the user's requirements dictate the use of a governmental system for reasons such as National security, homeland security, law enforcement, and humanitarian operations.

Current subsection 911.3(p), ''testing use,'' is renumbered as 911.3(q) and changes have been made to correct a typographical error in the text of the CFR wherein part of the definition was repeated.

Current subsection 911.3(q), ''user,'' is renumbered as 911.3(r) and a new clause is added to the definition to include the organization requiring collection of the data within the definition of ''user.''

Current subsection 911.3(r), ''user platform,'' is renumbered as 911.3(s).

Current subsection 911.3(s), ''user requirement,'' is renumbered as 911.3(t).

Subsection 911.4(c)(3) is changed to recognize non-environmental use, in those limited situations where it is allowed, for both types of NOAA DCS (Argos DCS and GOES DCS). Non-environmental use of the NOAA DCS systems will be limited to episodic use and to sensitive use. The five percent cap on non-environmental use of Argos DCS is removed to permit greater discretion for sensitive and episodic use of the system (subject to capacity limitations) on an as-needed basis.

In subsection 911.4(c)(4), episodic use is now recognized for all NOAA DCS, not just Argos DCS.

Subsection 911.5(c) is amended by inserting ''for System Use Agreements and renewals'' following ''user requests'' to clarify which user requests are covered.

Subsection 911.5(e)(1) is amended by inserting ''environmental'' before the word ''data.''

Subsection 911.5(e)(3) and 911.5(e)(4) are added to define the period of performance for non-environmental use of GOES DCS.

Section 911.6 has been revised to ensure that users are on notice regarding the open data transmission aspects of the NOAA DCS. The proposed regulation amends section 911.6 as follows:

- Subsection 911.6(a) is amended to require users to permit NOAA and other agencies to make ''appropriate use as determined by NOAA'' of the data;
- Subsection 911.6(a) is further amended by inserting ''environmental'' before ''data'' to clarify which data will be subject to ''full, open, timely, and appropriate use'' by NOAA and other U.S. Government agencies;
- Subsection 911.6(a) also is amended to delete the last sentence in the current rule which refers to the protection of proprietary data (new subsections 911.6(b) and (c), below, will address this issue);
- A new subsection 911.6(b) is inserted to provide notice that the raw data from the NOAA space segment is openly transmitted and accessible; and
- A new subsection 911.6(c) is inserted to provide notice regarding the accessibility of NOAA DCS data during the ground segment.

The new provisions in 911.6 put users on notice that NOAA can only control data distribution once it is received at NOAA ground stations and, even then, only within the design limitations of the ground system segment. The revised rule notifies DCS users that raw data may be openly received during the space segment transmission of the data where access is not controlled. After the data is received, access to the processed data from the ground segment is affected by the user' specifications and the system design limitations.

Appendix A (Argos DCS Use Policy Diagram) and Appendix B (GOES DCS Use Policy Diagram) have been updated to incorporate the effects of the proposed changes on the NOAA DCS system use policy.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is as follows. A fundamental principle underlying NOAA's DCS rule is that Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill user's requirements. Moreover, the proposed rule provides for non-environmental use of the NOAA DCS in two discrete situations, one involving episodic uses in instances where there is a significant possibility of loss of life, and the other where there is a governmental interest and the use of commercial services is not appropriate due to the sensitive nature of the applications, such as for National security or law enforcement purposes. Thus the proposed rules are not expected to impact small businesses. As such, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act of 1995 (35 U.S.C. 3500 *et seq*.)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved under OMB Control Number 0648–0157.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 1 hour per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information to Kay Metcalf, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304; and to OMB at the Office of Information and Regulatory Affairs, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act (42 U.S.C. 4321 *et seq*.)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

Dated: March 28, 2003.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce.

For the reasons set out in the preamble, 15 CFR part 911 is proposed to be amended as follows:

PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE–BASED DATA COLLECTION SYSTEMS

1. The authority citation for part 911 continues to read as follows:

Authority: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

2. Revise § 911.3(p), (q), (r), and (s) and add paragraph (t) as follows:

§ 911.3 Definitions.

* * * * *

(p) Sensitive use means the use of the NOAA DCS where the users' requirements dictate the use of a governmental system such as National security, homeland security, law enforcement and humanitarian operations.

(q) Testing use means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(r) User means the entity and/or organization that owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS, or the organization requiring the collection of the data.

(s) User platform means device designed in accordance with the specifications delineated and approved by the Approving Authority used for the in-situ collection and subsequent transmission of data via the NOAA DCS.

Those devices which are used in conjunction with the GOES DCS are referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms ''user platform,'' ''DCP'', and ''PTT'' are interchangeable.

(t) User requirement means the requirement expressed and explained in the System Use Agreement.

3. Revise § 911.4(c)(3) and (c)(4) as follows:

§ 911.4 Use of the NOAA Data Collection Systems.

* * * * *

(c) * * *

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the NOAA DCS is only authorized for government use and non-profit users where there is a government interest. The NOAA DCS will continue to be predominantly used for environmental applications. Non-environmental use of the system shall be limited to sensitive use, and to episodic use as defined below in paragraph (c)(4) of this section.

(4) Episodic use of the NOAA DCS may also be authorized in specific instances where there is a significant possibility for loss of life. Such use shall be closely monitored.

* * * * *

4. Revise § 911.5(c) and (e)(1), and add new paragraphs (e)(3), and (e)(4) as follows:

§ 911.5 NOAA Data Collection Systems Use Agreements.

* * * * *

(c) The Director shall evaluate user requests for System Use Agreements and renewals and conclude agreements for use of the NOAA DCS.

* * * * *

(e)

(1) Agreements for the collection of environmental data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

* * * * *

(3) Agreements for the collection of non-environmental data, via the GOES DCS, by government agencies, or non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the GOES DCS under § 911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

5. Revise § 911.6 to read as follows:

§ 911.6 Treatment of data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open, timely, and appropriate use as determined by NOAA, of all environmental data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization.

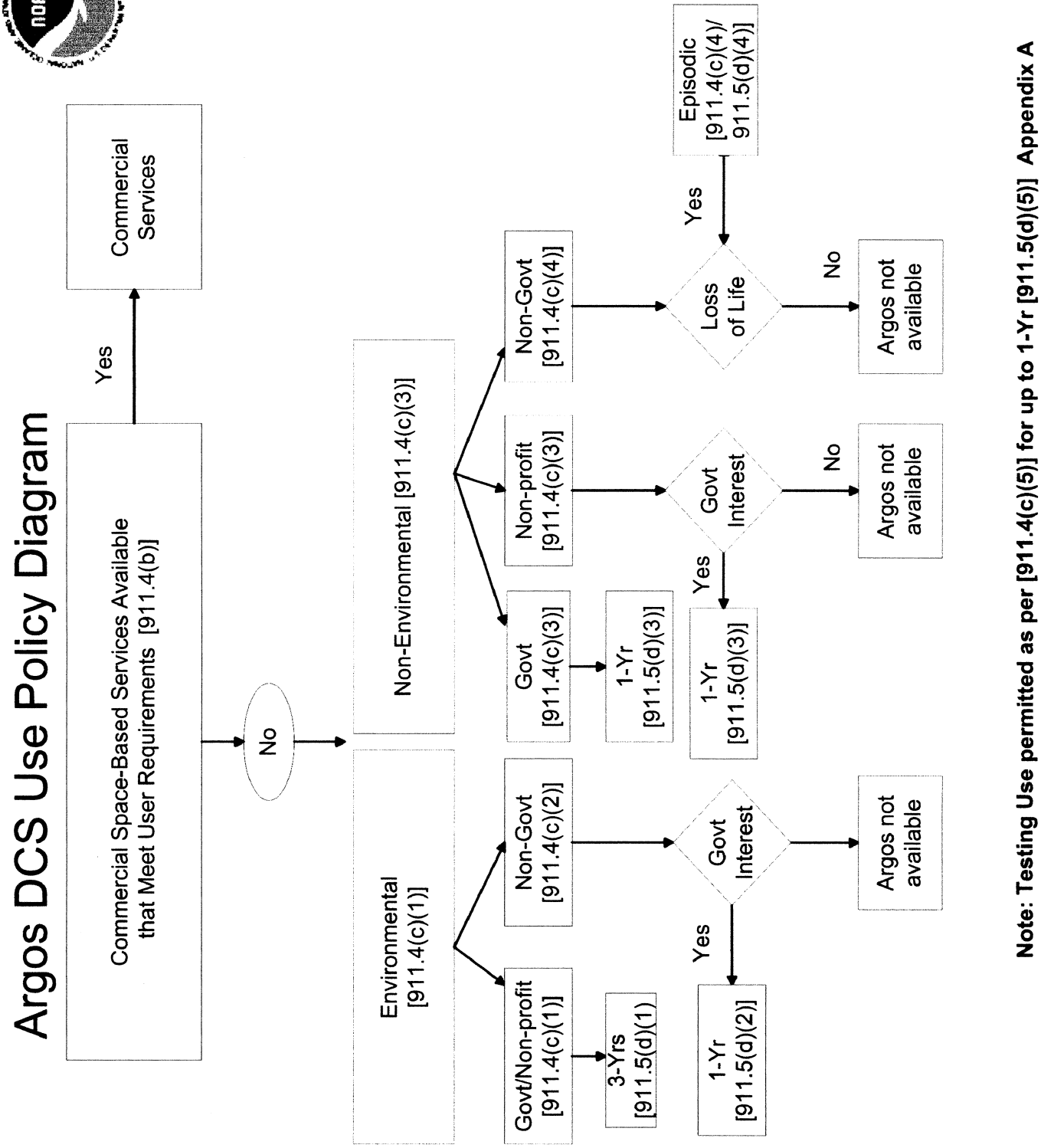
(b) Raw data from the NOAA space segment is openly transmitted and accessible.

(c) Accessibility of the NOAA DCS processed data from the ground segment is handled in accordance with the users specifications and system design limitations, subject to the provisions stated in paragraph (a) of this section.

6. Revise Appendix A to Part 911 as follows:

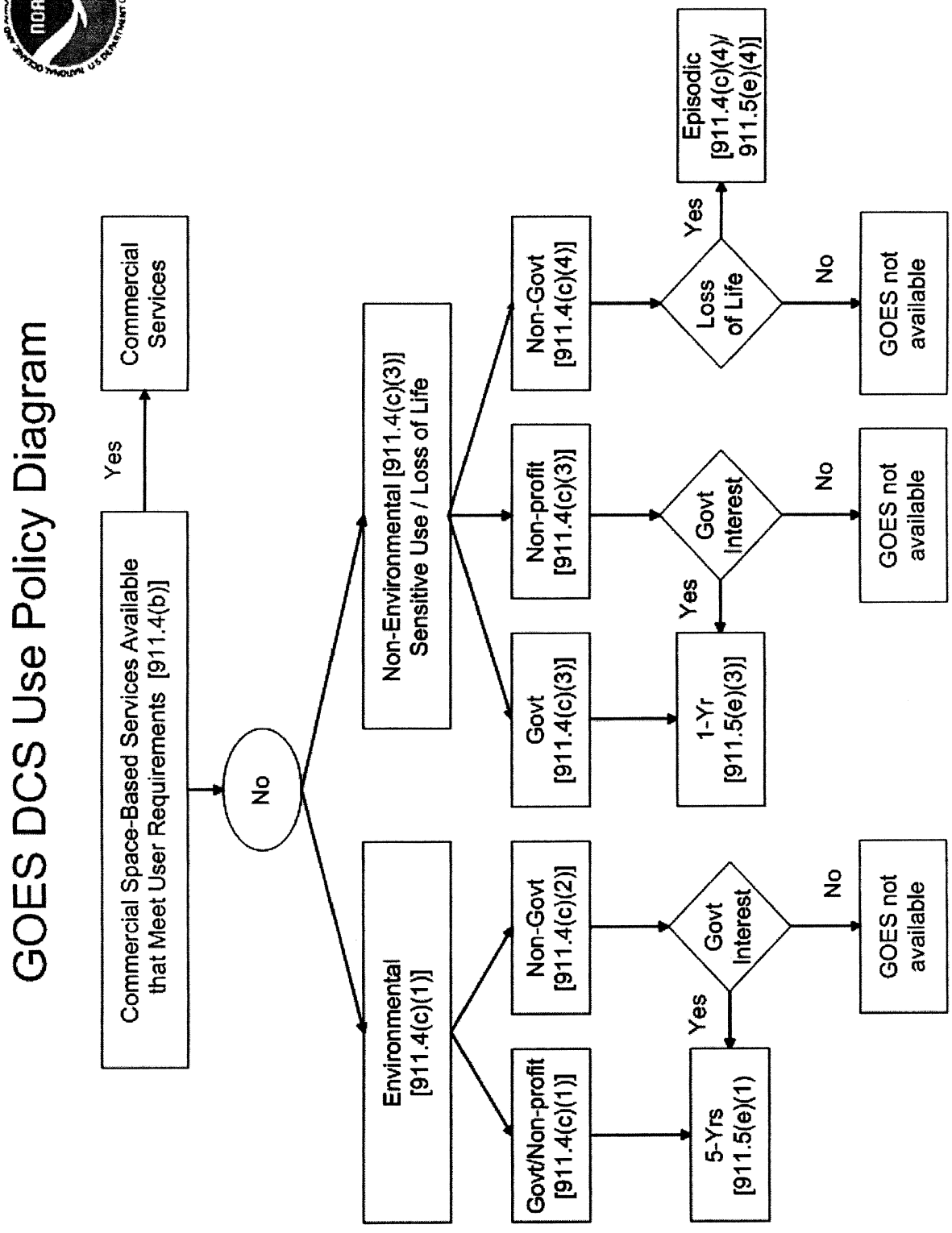
BILLING CODE 3510–12–U

Appendix A to Part 911 - Argos DCS Use Policy Diagram



7. Revise Appendix B to Part 911 as follows:

Appendix B to Part 911 - GOES DCS Use Policy Diagram



Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(e)(2)] Appendix A

[FR Doc. 03–8184 Filed 4–7–03; 8:45 am]
BILLING CODE 3510–12–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket Nos. 02N–0275 and 02N–0277]

Proposed Regulations Implementing Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss proposed regulations implementing two sections in Title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) regarding maintenance and inspection of records for foods (Docket No. 02N-0277) and administrative detention (Docket No. 02N-0275). FDA expects to publish shortly in the **Federal Register** proposed rules implementing each of these provisions. The purpose of the satellite downlink public meeting is to provide information on the proposed rules to the public and to provide the public an opportunity to ask questions or to provide comment.

DATES: The satellite downlink public meeting will be held on May 7, 2003, 1 to 3 p.m., eastern standard time. Questions submitted in advance must be received by the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document by 4:30 p.m. on May 2, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations where the satellite downlink may be viewed. A written transcript of the meeting will be available for viewing at Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and at http://www.fda.gov/oc/bioterrorism/bioact.html. A copy of the videotaped meeting may also be viewed at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Louis Carson, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2277, FAX: 301–436–2605, e-mail: CFSAN-FSS@cfsan.fda.gov, for general questions about the downlink, submission of advance questions, and requests for a taped version of the meeting. Registration for specific downlink locations should be directed to the appropriate contact person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes four provisions in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A (Protection of Food Supply) that require the Secretary of Health and Human Services, through FDA, to develop implementing regulations on an expedited basis. These four provisions are: Section 305 (Registration of Food Facilities), section 307 (Prior Notice of Imported Food Shipments), section 306 (Maintenance and Inspection of Records for Foods), and section 303 (Administrative Detention). On February 3, 2003, FDA published in the **Federal Register** notices of proposed rulemaking for registration of food facilities (68 FR 5378) and prior notice of imported food shipments (68 FR 5428), and will soon publish in the **Federal Register** notices of proposed rulemaking for maintenance and inspection of records for foods and administrative detention. During the satellite downlink public meeting, FDA will explain the proposed rules on maintenance and inspection of records for foods and administrative detention and will answer questions. The satellite downlink public meeting will be offered in English with simultaneous French and Spanish translation and will be simulcast live in English, French, and Spanish for North, Central, and South America (including Hawaii and Alaska).

On January 29, 2003, FDA held a satellite downlink meeting during which FDA explained the proposed rules for registration of food facilities and prior notice of imported food shipments to implement sections 305 and 307 of the Bioterrorism Act, respectively. You may download a copy of the videotape of this meeting at http://www.cfsan.fda.gov/~comm/vltbtact.html. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, within 3 weeks of the satellite downlink public meeting at a cost of 10 cents per page. Contact Louis Carson for a copy of the videotaped meeting. A copy of the video taped meeting may also be viewed at the Dockets Management Branch.

Information about the public meetings, a list of additional non-FDA Web sites for viewing the public meetings, contact information, the provisions of the Bioterrorism Act under FDA's jurisdiction, and the agency's implementation plans are available at http://www.fda.gov/oc/bioterrorism/bioact.html.

II. Submitting Questions

Interested persons may submit questions concerning the proposals in advance of the satellite downlink meeting. The deadline for the submission of questions is provided in the **DATES** section of this notice. Questions submitted in advance will be used by the session moderator to help clarify issues of concern and provide information about the proposals during the downlink meeting. The viewing audience may also telephone, fax, or e-mail questions to FDA officials during the live downlink.

III. Proposed Regulations to be Addressed

The proposed regulations that will be addressed at the satellite downlink public meeting announced in this document concern the following provisions of the Bioterrorism Act:

Section 303 (Administrative Detention) of the Bioterrorism Act authorizes FDA to detain food if the agency has credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. The Bioterrorism Act requires FDA to issue regulations to provide procedures for instituting on an expedited basis certain enforcement actions against perishable foods, but it does not specify a deadline for a final regulation.

Section 306 (Maintenance and Inspection of Records for Foods) of the Bioterrorism Act authorizes FDA, by regulation, to require persons that manufacture, process, pack, transport, distribute, receive, hold, or import food to create and maintain records that FDA determines are necessary to identify the immediate previous sources and the immediate subsequent recipients of food (i.e., where it came from and who received it). This would allow FDA to follow up on credible threats of serious adverse health consequences or death to

humans or animals by tracing the food back to its source and tracing the food forward to all recipients. Farms and restaurants are exempt from any recordkeeping regulations that are issued by FDA. The statute requires FDA to issue final regulations by December 12, 2003.

IV. Sites for Viewing the Downlink Public Meeting

A list of non-FDA parties providing other locations for viewing the downlink public meeting is provided in table 1 of this document. The parties listed are providing this service free of charge in the interest of providing information to their constituents and to assist in creating a public process.

TABLE 1.—MAY 7, 2003, SATELLITE DOWNLINK PUBLIC MEETING TO DISCUSS PROPOSED REGULATIONS IMPLEMENTING SECTION 303: ADMINISTRATIVE DETENTION AND SECTION 306: MAINTENANCE AND INSPECTION OF RECORDS FOR FOODS OF THE BIOTERRORISM ACT

Locations	Contact Information
Department of Veterans Affairs Medical Center, Pete Wheeler Auditorium, 1670 Clairmont Rd., Decatur, GA 30033, 404–321–6111, ext. 6050.	JoAnn Pittman, U.S. FDA/Atlanta District Office, 60 8th St., NE., Atlanta, GA 30309, 404–253–1272, FAX: 404–253–1202, email: jpittman@ora.fda.gov.
U.S. FDA, Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207–4291, 313–393–8109.	Evelyn DeNike, U.S. FDA/Detroit District Office, 300 River Pl., suite 5900, Detroit, MI 48207–4291, 313–393–8109, FAX: 313–393–8139, email:edenike@ora.fda.gov.
Massachusetts Department of Public Health, Division of Food and Drugs, 305 South St., Jamaica Plain, MA 02130, 617–983–6767.	Susan Small, U.S. FDA/New England District Office, One Montvale Ave., Stoneham, MA 02180, 781–596–7779, FAX: 781–596–7896, email: ssmall@ora.fda.gov.
University of California Irvine, C–127 Student Center (at E. Peltason/Periera), Emerald Bay B and C, Irvine, CA 92697.	Ramlah I. Oma, U.S. FDA/Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612–2445, 949–798–7611, FAX: 949–798–7656, email: roma@ora.fda.gov.
Center for Food Safety and Applied Nutrition, U.S. FDA, Auditorium, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2428.	Contact: Tonya Poindexter, U.S. FDA/Center for Food Safety and Applied Nutrition, rm. 3B035, College Park, MD 20740, 301–436–2277, FAX: 301–436- 2605, email: CFSAN–FSS@cfsan.fda.gov.

In addition, any interested parties with access to a satellite dish may view the downlink meeting at the following coordinates:

Live simulcast in English (channel 6.8), French (channel 5.8), and Spanish (channel 6.2).

Pre-event Test: A pre-event test for U.S. downlink sites only will be provided on May 6 from 12 noon EST to 1 p.m. EST. During that hour, technical assistance will be available through a trouble line at 1–888–626–8730.'' This is a test of Galaxy 9, Transponder 3 only.

U.S.—C-BAND: GALAXY 9 127 DEGREES WEST

Transponder	Polarization	Channel	Downlink Freq.	Audio
3	Vertical	3	3760 MHz	6.8 English 6.2 Spanish 5.8 French

MEXICO & SOUTH AMERICA—C-BAND: PAS 9 58 DEGREES WEST

Transponder	Polarization	Channel	Digital Settings	Downlink Freq.	Audio
24 Slot C - Digital	Horizontal	24	4:2:0 FEC 3/4 Symbol Rate: 5.632	4164.5 MHz	6.8 English 6.2 Spanish 5.8 French

Video rebroadcasts will be played at several locations throughout the world. Dates and viewing times for the video rebroadcasts for Europe, Asia, Australia, New Zealand can be found on FDA's bioterrorism Web site (http://www.fda.gov/oc/bioterrorism/bioact.html. Information on additional video rebroadcasts in English, Spanish, and French will also be available at http://www.fda.gov/oc/bioterrorism/bioact.html.

Videostream copies of the satellite downlink meeting will be available in English, Spanish, and French on CD–ROM within 10 working days after the meeting. Copies of the meeting will also be available on videotape cassettes in English, Spanish, and French in NTSC (VHS), PAL, PAL–N and SECAM formats. Contact Louis Carson for a copy of the meeting on CD–ROM or videotape. Videotape requests must specify language and format. A videostream of the meeting will be posted on FDA's Web site at http://www.fda.gov/oc/bioterrorism/bioact.html.

V. Registration

To register for the satellite downlink public meeting, contact the persons

listed in table 1 in this document for the site you want to attend. Space is limited and registration will be closed at each site once maximum seating capacity for that site is reached (between 100 and 200 people per site). Send registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) for each attendee to the contact identified in table 1 of this document no later than May 5, 2003. You may register by e-mail, fax, or telephone.

If you need special accommodations due to a disability, please notify the contact person listed in table 1 of this document at least 7 days in advance of the meeting.

VI. Transcripts

Within 3 weeks of the satellite downlink public meeting, written transcripts in English, French, and Spanish will be available for viewing at the Dockets Management Branch (see **ADDRESSES**) and posted on the following Web site: http://www.fda.gov/oc/bioterrorism/bioact.html. A written transcript of the satellite downlink meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, within 3 weeks of the satellite downlink public meeting at a cost of 10 cents per page. Contact Louis Carson for a copy of the videotaped meeting. A copy of the video taped meeting may also be viewed at the Dockets Management Branch.

Dated: April 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8576 Filed 4–3–03; 4:18 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–06]

Indian Housing Block Grant Allocation Formula: Notice of Establishment of Negotiated Rulemaking Committee and Announcement of Final List of Committee Members

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD announces the establishment of its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee, consistent with the Negotiated Rulemaking Act of 1990. In addition, this notice announces the final list of committee members. The committee will negotiate a proposed rule to revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. This document follows publication of July 16, 2001, July 5, 2002, and January 22, 2003, notices advising the public of HUD's intent to establish the negotiated rulemaking committee and soliciting nominations for membership on the committee.

DATES: The first meeting of the negotiated rulemaking committee will be held on Tuesday, April 29, 2003, Wednesday, April 30, 2003, and Thursday, May 1, 2003. The meetings will start at 9 a.m. each day and are scheduled to adjourn at 4 p.m. each day.

ADDRESSES: The meetings will take place at the Adams-Mark Hotel, 1550 Court Place Street, Denver, Colorado 80202; telephone (303) 893–3333.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

With tribal participation, HUD developed the March 12, 1998 (63 FR 12349), final rule that implemented the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*) (NAHASDA). Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), the committee negotiated the March 12, 1998, final rule, which created a new 24 CFR part 1000 containing the Indian Housing Block Grant (IHBG) regulations. NAHASDA established the IHBG Program by reorganizing housing assistance to Native Americans and eliminating and consolidating a number of HUD assistance programs. In addition to creating a single housing assistance program, NAHASDA provides Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government.

The amount of assistance made to Indian tribes is determined using a formula, developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of this formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). In general, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with the statutory and regulatory requirements, the grant is made.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period closes in March 2003. Further, the Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000), makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to review the IHBG formula.

II. The Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee

Through this notice, HUD announces the establishment of its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee. The committee will negotiate a proposed rule to revise the allocation formula used for the IHBG Program. In addition, section IV of this notice announces the final list of negotiated rulemaking committee members.

HUD first published a notice of intent to establish a negotiated rulemaking committee on July 16, 2001 (66 FR 37098), but due to the events of September 11, 2001, HUD was not able to act on the notice within the timeframes originally intended. Accordingly, HUD published a July 5, 2002, notice, which (1) again advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; (3) explained how persons could be nominated for membership to the committee; and (4) announced the names of those who successfully completed applications under the original July 16, 2001, notice. In particular, HUD solicited committee members from among elected officers of tribal governments (or authorized designees of those tribal governments)

with a definable stake in the outcome of a proposed rule. On January 22, 2003 (68 FR 3112), HUD published a third **Federal Register** notice, announcing the list of proposed members for the negotiated rulemaking committee, and requesting additional public comment on the proposed membership.

III. Discussion of Public Comments Received on the January 22, 2003, Notice

The public comment period on the January 22, 2003, notice closed on February 21, 2003. The notice was of interest to Indian country, as demonstrated by the 40 public comments that HUD received on the notice. This section presents a summary of the issues raised by the commenters on the January 22, 2003, notice, and HUD's responses to these issues.

Comment: HUD failed to provide response to public comments on previous notices. Several commenters wrote that HUD had not responded to comments submitted in response to the two earlier **Federal Register** notices.

HUD response. HUD disagrees, and notes that it has made several changes to this negotiated rulemaking process as a result of the comments received on the July 16, 2001, and July 5, 2002, notices. Among other such modifications, HUD expanded the size of the committee from 18 to 24 members, and increased the number of HUD representatives from one to two for a total of 26 committee members. HUD also clarified that the relevant qualifying experience for membership on the committee included experience as a housing practitioner, and extended the time for nominees with incomplete applications to submit the missing information. Further, HUD clarified the meaning of the terms ''small,'' ''medium,'' and ''large'' tribes in response to commenters requesting such clarification. In addition, HUD sought a second round of nominations in response to concerns that there was insufficient geographic diversity among the original candidates for committee membership.

Comment: The qualifications for membership on the committee were unclear. Several commenters expressed this concern.

HUD response. As discussed in the response to the preceding comments, HUD has clarified and addressed any questions regarding the qualifications for membership on the negotiated rulemaking committee. HUD believes that the qualifications were understood by the vast majority of Indian tribes, as evidenced by the large number of highly qualified candidates that were nominated for membership on the committee.

Comment: Adequate time must be given to the committee to complete its work. Several commenters made this recommendation.

HUD response. HUD agrees, and is committed to ensuring that the negotiated rulemaking committee is provided with sufficient time to complete the development of a proposed rule.

Comment: Small tribes will need a special allocation of travel funds to attend the negotiated rulemaking committee meetings. Several commenters made this suggestion.

HUD response. HUD is sympathetic to the concerns expressed by these commenters, and notes that travel expenses are an eligible expense under the IHBG Program.

Comment: Comments regarding committee membership. Several commenters wrote that the number of committee members does not adequately represent all tribal interests. Other commenters wrote that the proposed committee membership did not represent an adequate balance of geographically diverse small, medium and large tribes.

HUD response. HUD believes that the final committee membership reflects a balanced representation of all Indian tribes. As noted in a preceding response, HUD increased the number of committee members from 18 to 26 in response to comments received from the tribes. Further, HUD sought a second round of nominations in response to concerns that there was insufficient geographic diversity among the original candidates for committee membership.

Comment: HUD should also establish a list of alternate committee members to represent the interests of members unable to attend committee meetings. Several commenters made this suggestion. The commenters wrote that it is important to select alternates so that a member's particular interests will be represented even if the member is unable to attend a committee meeting.

HUD response. Rather than pre-selecting a team of alternates, HUD has determined that each committee member should have the discretion to decide who will best represent them in their absence. A committee member unable to attend any session should inform the committee in writing as to whom they have selected to represent them.

Comment: Support for proposed committee members and additional nominations for membership. The majority of the additional comments received were letters in support of particular proposed committee members, along with several letters from interested parties nominating other individuals the commenter felt would better represent particular interests.

HUD response. HUD appreciates the support expressed by the commenters, as well as the additional nominations for committee membership. If a tribe requested that its tribal representative be replaced with a substitute, HUD has honored that request. The number of highly qualified individuals nominated for membership has helped to ensure the success of this negotiated rulemaking process. HUD looks forward to working with its tribal partners in the development of proposed changes to the IHBG Formula.

IV. Final Membership of the Negotiated Rulemaking Committee

This section announces the final list of negotiated rulemaking committee members. In making the selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. In addition to the tribal members of the committee, there will be two HUD representatives on the negotiated rulemaking committee. The firm of Carr, Falkner & Swanson will serve as facilitators.

The final list of members of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee is as follows:

Tribal Members

Eddie L. Tullis, Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama.

Joel M. Frank, Housing Director, Seminole Tribe of Florida, Hollywood, Florida.

Beasley Denson, Vice Chief, Mississippi Band of Choctaw Indians, Choctaw, Mississippi.

Bruce K. LaPointe, Development Director, Sault St. Marie Housing Authority, Sault Ste. Marie, Michigan.

Bill Anoatubby, Governor, The Chickasaw Nation, Ada, Oklahoma.

Russell Sossamon, Executive Director, Housing Authority of the Choctaw Nation of Oklahoma, Hugo, Oklahoma.

Robert B. Carlile III, Executive Director, Citizen Potawatomi Nation Housing Authority, Shawnee, Oklahoma.

Marvin Jones, Executive Director, Community Services, Cherokee Nation, Tahlequah, Oklahoma.

Jack Sawyers, Executive Director, Utah Paiute Tribal Housing Authority, Cedar City, Utah.

Robert Gauthier, Executive Director, Salish and Kootenai Housing Authority, Pablo, Montana.

Wayne Ducheneaux, Executive Director, Cheyenne River Housing Authority, Eagle Butte, South Dakota.
Darlene Tooley, Executive Director, Northern Circle Indian Housing Authority, Ukiah, California.
Michael L. Reed, Chief Executive Officer, Cocopah Indian Housing and Development, Somerton, Arizona.
Terry Hudson, Executive Director, Northern Pueblos Housing Authority, Espanola, New Mexico.
Judith Marasco, Executive Director, Yurok Indian Housing Authority, Klamath, California.
Johnny Naize, Tribal Council Member, Navajo Nation, Window Rock, Navajo Nation, Arizona.
Brian Wallace, Chairman, Washoe Tribe of Nevada and California, South Gardnerville, Nevada.
Larry Coyle, Tribal Council Member, Cowlitz Tribe, Oakville, Washington.
Tim King, Tribal Council Member, Samish Indian Nation, Seattle, Washington.
Virginia Brings Yellow, Tribal Council Member, Quinault Indian Nation, Taholah, Washington.
Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.
Blake Y. Kazama, Executive Director, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.
Ron Hoffman, Executive Director, Association of Village Council Presidents, Regional Housing Authority, Bethel, Alaska.
Carol Gore, Executive Director, Cook Inlet Housing Authority, Anchorage, Alaska.

HUD Representatives

Michael M. Liu, Assistant Secretary for Public and Indian Housing.
Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs.

V. First Committee Meeting

The first meeting of the Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee will be on Tuesday, April 29, 2003, Wednesday, April 30, 2003, and Thursday, May 1, 2003. The meetings will start at 9 a.m. each day and are scheduled to adjourn at 4 p.m. each day. The meetings will take place at the Adams-Mark Hotel, 1550 Court Place Street, Denver, Colorado 80202.

The agenda planned for the meeting includes: (1) Orienting members to the negotiated rulemaking process; (2) establishing a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus; and (3) discussion of the issues relating to the IHBG Allocation Formula.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

VI. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: April 1, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–8550 Filed 4–7–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209500–86 and REG–164464–02]

RIN–1545–BA10, 1545–BB79

Reductions of Accruals and Allocations Because of the Attainment of Any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change in date and location for public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a change of date and location for the public hearing on proposed regulations under sections 401 and 411 regarding the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age.

DATES: The public hearing is being held on Wednesday, April 9, 2003, and Thursday, April 10, 2003 at 10 a.m. Outlines of oral comments were due by Thursday, March 13, 2003.

ADDRESSES: The public hearing is being held in the Andrew W. Mellon Auditorium, 1300 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION: Concerning the regulations, Linda Marshall (202) 622–6090; concerning submissions, Sonya M. Cruse (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Wednesday, December 11, 2003 (67 FR 76123), announced that a public hearing on proposed regulations relating to the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age would be held on Thursday, April 10, 2003, in room 4718, Internal Revenue Building 1111 Constitution Avenue, NW., Washington, DC. A subsequent notice published in the **Federal Register** on January 17, 2003, (68 FR 2466), changed the date and location of the public hearing to April 9, 2003, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of the number of individuals requesting to speak at the hearing, the hearing will be held on both Wednesday, April 9, 2003 and on Thursday, April 10, 2003. On both dates the hearing will begin at 10 a.m., and registration for the hearing will begin at 9 a.m. On both dates the hearing will be held in the Andrew W. Mellon Auditorium, 1300 Constitution Avenue, NW., Washington, DC.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 03–8575 Filed 4–3–03; 3:54 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–088–7216b; A–1–FRL–7466–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to 310 CMR 7.06, Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. On August 9, 2001, the Massachusetts Department of Environmental Protection (MA DEP) formally submitted a SIP revision containing multiple revisions to the State Regulations for the Control of Air Pollution. In today's action EPA is conditionally approving one portion of these rule revisions, 310 CMR 7.06(1)(c), into the Massachusetts SIP. This conditional approval is based on a commitment by MA DEP to submit a

revised regulation by one year from today. If Massachusetts fails to submit the required revisions within one year of this conditional approval, then this conditional approval will be converted to a disapproval.

DATES: Written comments must be received on or before May 8, 2003.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Environmental Planner, (617) 918–1665; *butensky.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is conditionally approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 21, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–8360 Filed 4–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of time; submission of oral comments; public hearing.

SUMMARY: The Commission has determined to extend the comment period in this matter, and to provide interested persons with the opportunity to make oral presentations to individual Commissioners and at a public hearing before the full Commission.

DATES: Comments are now due on May 30, 2003.

ADDRESSES: Address all comments and inquiries concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. (202) 523–5725. E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001. (202) 523–5740. E-mail: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to rule 53(a) of the Commission's rules of practice and procedure, 46 CFR 502.53(a)(2002), in notice-and-comment rulemakings the Commission may permit interested persons to make oral presentations in addition to filing written comments. The Commission has determined to permit interested persons to make such presentations to individual Commissioners in this proceeding, and additionally to hold a public hearing before the full Commission.

At the discretion of individual Commissionaries, interested persons request one-on-one meetings at which they may make presentations describing their views on the proposed rule. Any meeting or meetings shall be completed before the close of the comment period. The summary or transcript of oral presentations will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Interested persons wishing to make an oral presentation should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has also determined to hold a public hearing, at which interested parties may make presentations and field questions from the Commissioners. The date and time of the hearing will be set forth in a subsequent order.

Finally, the deadline for filing comments is extended to May 30, 2003.

By the Commission. *

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–8611 Filed 4–4–03; 9:29 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–815; MB Docket No. 03–78, RM–10684]

Radio Broadcasting Services; Bend and Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Combined Communications, Inc., licensee of Station KTWS–FM, Channel 253C3, Bend, Oregon. Petitioner proposes to upgrade the allotment for Channel 253C3 at Bend, Oregon, to Channel 253C1, and to modify the license of KTWS–FM accordingly. In order to facilitate that change, petitioner further proposes to substitute Channel 271C3 for Channel 255C3, a vacant allotment at Prineville, Oregon, and to change the reference coordinates for that allotment. Channel 271C3 can be allotted to Prineville in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.6 km (8.4 miles) east of Prineville. The coordinates for Channel 271C3 at Prineville are 44–20–36 North Latitude and 120–44–06 West Longitude. If that change is made in the Table of Allotments, Channel 253C1 can be allotted to Bend in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 km (1.6 miles)

* Commissioner Brennan, concurring in part and disenting in part: A public hearing is far better public policy, in my view, than closed-door meetings with interested parties, when one is considering a substantial rule change. While I support the decision to extend the comment period and to hold a public hearing, I dissent as to the matter of one-on-one presentations, the need for which is obviated by a public hearing.

northwest of Bend. The coordinates for Channel 253C1 at Bend are 44–04–41 North Latitude and 121–19–57 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before May 12, 2003, and reply comments on or before May 27, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: J. Dominic Monahan, Luvaas, Cobb, Richards & Fraser, P.C., 777 High Street, Suite 300, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–78, adopted March 19, 2003 and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202)863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 253C3 and by adding Channel 253C1 at Bend; and by removing Channel 255C3 and by adding Channel 271C3 at Prineville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8407 Filed 4–7–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the requirement to count DAS under this EFP against his NE multispecies DAS allocation; the fishing restrictions imposed by the GOM rolling closure areas; and the minimum fish size requirements for the temporary retention of undersized fish for data collection purposes. The EFP would allow these exemptions for not more than 20 days of sea trials. All experimental work would be monitored by a UNH Cooperative Extension technician.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before April 23, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Cooperative Extension Shallow Gillnet Selectivity EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The UNH Cooperative Extension submitted an application for an EFP on January 24, 2003, with final revisions received on March 21, 2003. The experimental fishing application requests authorization to allow the collection of data on the performance of two gillnet designs that are intended to utilize differences in behavior and closeness to the seabed between flatfish and cod. It is hypothesized that the shallower nets will have better species and size selectivity than either regular roundfish gillnets, tie-down gillnets, and foam-core flatfish gillnets, thereby reducing discards of GOM cod and allowing fishermen to continue to fish for flatfish without exceeding the cod possession limits. The time period for this experiment would be May 1–August 31, 2003. The location of the experiment would be bounded by the New England shoreline, west of 69° W. long., and north of 42° N. lat. The experiment would use a total of 40 gillnets, 300 ft (91.44 m) in length with 7–inch (17.7 cm) mesh. The control group nets would be 25 meshes deep while the experimental group nets would be 12 and 8 meshes deep.

The applicant has requested an exemption from 20 NE multispecies DAS to conduct the experiment. The applicant has also requested an exemption from GOM rolling closures III and IV. The applicant has also requested that the vessel be allowed to land any legal-sized fish for which he is permitted, for commercial sale within GOM possession limits. There would be some bycatch of sub-legal sized fish

associated with the experiment (approximately 420 lb (190.5 kg) of cod, 1,740 lb (789 kg) of dogfish and 100 lb (45.36 kg) of mixed fluke, dabs, mackerel and pollock). All undersized fish will be returned to the water as soon as practicable after the measurements are recorded. Estimated total landings, excluding discards, is approximately 20,000 lb (9,072 kg) of mixed multispecies (9,000 lb (4,082 kg) cod, 10,000 lb (4,536 kg) dogfish, and 1,000 lb (454 kg) of mixed fluke, dabs, mackerel, and pollock) based upon 50 percent of the commercial catch rate. A technician from the UNH Cooperative Extension would be on the vessel for all of the trips associated with this EFP. The participating vessel would be required to comply with applicable state landing laws and report all landings on the Federal Fishing Vessel Trip Report.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 .S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8554 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032803G]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from: The requirement to count days-at-sea (DAS) under this EFP against the NE multispecies DAS allocation for a total of 30 DAS; the fishing restrictions imposed by the Gulf of Maine (GOM) rolling closure areas; the minimum mesh size requirements specified for the GOM Regulated Mesh Area; and the minimum fish size requirements for the temporary retention of undersized fish for data collection purposes. The EFP would allow these exemptions for not more than 30 days of sea trials. All experimental work would be monitored by University of New Hampshire Cooperative Extension scientists/observers.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 23, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Cooperative Extension Codend Mesh Size Selectivity Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone number 978–281–9220.

SUPPLEMENTARY INFORMATION: The UNH Cooperative Extension submitted an application for an EFP on January 21, 2003, with final revisions received on March 21, 2003. The experimental fishing application requests authorization to use one commercial fishing vessel to conduct sea trials of a hydrodynamic codend cover. The purpose of this experiment is to design a cover that would surround the codend without masking the net. Floats, weights, and kites would be placed on the outside of a trawl net to hold a supplemental small-mesh net away from the codend being examined. This would better enable researchers to evaluate a variety of codends by quantifying the amount of fish that escape, as well as those that are retained. The UNH researchers would use alternate tows both with, and without, the codend cover to evaluate differences in fish retention. Also, underwater video technology would be employed to observe the codend, the cover, and the fish escaping from the net. The codend cover would then be used to determine species and size selectivity of different trawl codend mesh sizes in the GOM multispecies fishery. Furthermore, the proposal seeks to determine fish retention in large mesh codends for GOM cod, haddock, whiting, and flounders (winter, witch, dabs). The experiment would compare the selectivity of 6.5–inch (16.51 cm) diamond mesh, 6.5–inch (16.51 cm) square mesh, 7–inch (17.78 cm) diamond mesh, and 7–inch (17.78 cm) square mesh codends against the regulation 6–inch (15.24 cm) diamond mesh. The biological impact of mesh size increases, including fishing mortality and discard rates of regulated multispecies, would be analyzed. The results of this mesh selectivity study would then be made available to the New England Fishery Management Council and NMFS.

The at-sea portion of the experiment would last no longer than 30 days between April and September, 2003. The activity would occur in Federal waters off the coast of New Hampshire excluding the Western GOM closure area. A total of 180, 30–minute tows at 2.8 knots would be conducted (six per day). UNH researchers would be required to be aboard the vessel at all times during the experimental work. All undersized fish would be returned to the sea as quickly as possible after measurement and examination. However, legal-sized fish that otherwise would have to be discarded would be allowed to be retained and sold within GOM possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report. The catch levels are not expected to have a detrimental impact on the NE multispecies resources. Estimated total landings for the 30 days are: Cod–9,000 lb (4,082 kg); flounders (winter, witch, dabs)-9,000 lb (4,082 kg); and other groundfish (haddock, cusk, white hake, silver hake, ocean pout, wolffish, etc.)-6,000 lb (2,722 kg). This is approximately one-half the amount of fish that would be landed by the vessel when fishing under normal operating conditions on a NE multispecies DAS. Because the vessel will be fishing with a 3–inch (7.62 cm) codend cover it is estimated that total discards will exceed that of normal fishing operations. Total discard is estimated at 36,000 lb (16,329

kg) (50 percent herring, 20 percent mackerel, 20 percent hake, 5 percent cod and haddock, and 5 percent flounders (winter, witch, dabs)). Researchers will take precautions to avoid areas where there are concentrations of undersized fish.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8555 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 67
Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrataive Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION: *OMB No.:* OMB 0412–.

Form No.: N/A.

Title: Reporting of foreign value added taxes and custom duties.

Type of Review: New.

Purpose: Subsections (b) and (g) of section 579 of USAID's FY 2003 appropriations act require USAID to withhold the equivalent of 200 percent of the amount of value added taxes and custom duties assessed by a foreign government or entity, from February 20, 2003 through September 30, 2003, on commodities financed with foreign assistance funds either directly or through grantees, contractors and subcontractors. The amount is to be withheld from FY 2004 funds allocated for a central government of the country or for the West Bank and Gaza Program. The amount to be withheld is reduced by any reimbursements of value added taxes and custom duties.

Subsection (e) of section 579 provides that the Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against taxation of assistance contained in this section.

In order for USAID to implement the statute and withhold the correct amounts, the agency needs to know from its contractors and grantees for each foreign country the amount of value added tax and custom duties paid and any reimbursements received.

We are interested in hearing from contractors and grantees as to the most effective way or ways to do this (*e.g.,* on voucher or other payment documents, separate report), and frequency (every voucher, monthly, quarterly, one-time report) and to the workings in practice of existing reimbursement systems.

Section 579(c) permits USAID to establish a minimum exception from the withholding requirements of subsection (b). We welcome your comments on what would be an appropriate minimum amount consistent with statute, by transaction amount or other basis, taking into account the administrative burden on contractors and grantees to track transactions.

USAID's appropriations act is the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 contained in Division E of H.J. Res. 2, the Consolidated Appropriations Resolution, 2003 (P.L. 108-7), February 20, 2003.

Annual Reporting Burden

Respondents: 4,000.

Total annual responses: 4,000.

Total annual hours requested: 24,000 hours.

Dated: April 1, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–8528 Filed 4–7–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–034–1]

Ivy Gourd; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to a proposed field release of a nonindigenous leaf-mining weevil, *Acythopeus coccinae,* into Guam and Saipan for the biological control of ivy gourd (*Coccinia grandis*). The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of this agent. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 8, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–034–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–034–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–034–1'' in the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The

reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Ecologist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering several applications for permits to release the nonindigenous leaf-mining weevil *Acythopeus cocciniae* in order to reduce the severity and extent of ivy gourd (*Coccinia grandis*) infestations in Guam and Saipan.

Ivy gourd is native to Africa, Asia, Fiji, and northern Australia. This invasive weed is a rapidly growing, climbing or trailing vine that forms thick mats, overgrowing trees and other vegetation, walls, fences, and utility poles. Ivy gourd also serves as a host for numerous pests of cucurbitaceous crops, including black leaf-footed bug (*Leptoglossus australis*), leafminers (*Liriomyza* spp.), melon aphid (*Aphis gossypii*), melon fly (*Bactrocera cucurbitae*), pumpkin caterpillar (*Diaphania indica*), red pumpkin beetle (*Aulacophora foveicollis*), and whiteflies (*Bemisia spp.*).

Ivy gourd has been detected in the United States in Guam, Hawaii, and Saipan. In July 1999, we prepared an environmental assessment (EA) that examined the potential release of *A. cocciniae* and another weevil of the same genus, *A. burkhartorum,* into the environment for use as biological control agents to reduce the severity and extent of ivy gourd infestations in the State of Hawaii. APHIS has subsequently received permit applications for additional releases of *A. cocciniae* beyond the area considered in the 1999 EA. The applicants propose to release *A. cocciniae* in Guam and Saipan to reduce the severity and extent of ivy gourd infestation on those islands.

A. cocciniae is native to Africa. Adults live up to 200 days and feed on the leaves of the ivy gourd, creating numerous holes in the lamina. Eggs are laid singly by insertion into the lamina of the leaves. The eggs hatch in about 8 days, and the larvae mine the leaves for 9 to 10 days thereafter. Pupation takes place within the mine and lasts for 15 days. Adult feeding and larval mining can cause drying of the leaves and eventual defoliation.

APHIS'' review and analysis of the proposed action and its alternatives are documented in detail in an EA entitled, ''Field Release of *Acythopeus cocciniae* (Coleoptera: Curculionidae), a nonindigenous leaf-mining weevil for control of ivy gourd, *Coccinia grandis* (Cucurbitaceae), in Guam and Saipan'' (February 2003). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for ''Document/Forms Retrieval System'' then clicking on the triangle beside ''6—Permits—Environmental Assessments,'' and selecting document number 0034. You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of April 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8518 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai (KNF) and Idaho Panhandle National Forests (IPNF); Montana, Idaho and Washington; Extension of Scoping For Revised Land and Resource Management Plans

AGENCY: Forest Service, USDA.

ACTION: Extension of the scoping period in conjunction with revision of the Land and Resource Management Plans (hereafter referred to as Forest Plan or Plans) for the Kootenai and Idaho Panhandle National Forests (Kootenai Idaho Panhandle Zone, hereafter referred to as KIPZ) located in Lincoln, Sanders, and Flathead countries in Montana; Bonner, Boundary, Kootenai, Shoshone, Benewah, Latah, and Clearwater counties in Idaho; and Pend Oreille county in Washington.

SUMMARY: The scoping period has been extended for the proposed revised Forest Plans and the Draft Environmental Impact Statement. The original notice of intent was published in the **Federal Register**, Vol. 67, No. 83, on page 21210, on April 30, 2002 as FR Doc. 02–10548.

DATES: Comments concerning the scope of the analysis must be received in writing by May 30, 2003.

ADDRESSES: Send written comments and suggestions to Forest Supervisor, c/o Forest Plan Revision, Kootenai National Forest, 1101 W Hwy 2, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Joe Krueger at (406) 293–6211 or Gary Ford at (208) 765–7478.

SUPPLEMENTARY INFORMATION: The scoping period has been extended to May 30, 2003, to provide additional time for public access to the Analysis of the Management Situation report. Comments received during the scoping period will be used to develop alternatives in the DEIS.

Dated: April 1, 2003.

Bob Castaneda,

Kootenai Forest Supervisor.

[FR Doc. 03–8483 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, April 21, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: update on the RAC new committee members, revisit RAC FY 2003 proposals and updates of proposal information, review progress of FY 2002 accounting, review Madera County RAC mission and clarify voting procedures.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, April 21, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 2000, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update on RAC new committee members; (2) revisit RAC FY 2003 proposals and updates of proposal information; (3) review progress of FY 2002 accounting; (4) review Madera County RAC mission and; (5) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 1, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–8484 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability (NOFA) Inviting Applications for the Renewable Energy Systems and Energy Efficiency Improvements Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of $23 million in competitive grant funds for fiscal year (FY) 2003 to purchase renewable energy systems and make energy improvements for agricultural producers and rural small businesses. In order to be eligible for grant funds, the agricultural producer or rural small business must demonstrate financial need. The grant request must not exceed 25 percent of the eligible project costs.

DATES: Applications must be completed and submitted to the appropriate United States Department of Agriculture (USDA) State Rural Development Office postmarked no later than June 6, 2003. Applications postmarked after June 6, 2003, will be returned to the applicant with no action. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before June 9, 2003.

ADDRESSES: Submit proposals to the USDA State Rural Development Office where your project is located or, in the case of a rural small business, where you are headquartered. A list of the Energy Coordinators and State Rural Development Office addresses and telephone numbers follow. For further information about this solicitation, please contact the applicable State Office.

USDA State Rural Development Offices

Alabama

Chris Harmon, USDA Rural Development
Sterling Center, Suite 601
4121 Carmichael Road
Montgomery, AL 36106–3683
(334) 279–3615

Alaska

Dean Stewart, USDA Rural Development
800 West Evergreen, Suite 201
Palmer, AK 99645–6539
(907) 761–7722

Arizona

Gary Mack, USDA Rural Development
3003 North Central Avenue, Suite 900
Phoenix, AZ 85012–2906
(602) 280–8717

Arkansas

Shirley Tucker, USDA Rural Development
700 West Capitol Avenue, Room 3416
Little Rock, AR 72201–3225
(501) 301–3280

California

Charles Clendenin, USDA Rural Development
430 G Street, Agency 4169
Davis, CA 95616–4169
(530) 792–5825

Colorado

Sue McWilliams, USDA Rural Development
628 West 5th Street
Cortez, CO 81321
(970) 565–8416, Ext. 127

Delaware-Maryland

James Waters, USDA Rural Development
4607 South Dupont Hwy.
P.O. Box 400
Camden, DE 19934–0400
(302) 697–4324

Florida/Virgin Islands

Joe Mueller, USDA Rural Development
4440 NW. 25th Place
P.O. Box 147010
Gainesville, FL 32614–7010
(352) 338–3482

Georgia

J. Craig Scroggs, USDA Rural Development
333 Phillips Drive
McDonough, GA 30253
(678) 583–0866

Hawaii

Tim O'Connell, USDA Rural Development
Federal Building, Room 311
154 Waianuenue Avenue
Hilo, HI 96720
(808) 933–8313

Idaho

Dale Lish, USDA Rural Development
725 Jensen Grove Drive, Suite 1
Blackfoot, ID 83221
(208) 785–5840, Ext. 118

Illinois

Cathy McNeal, USDA Rural Development
2118 West Park Court, Suite A
Champaign, IL 61821
(217) 403–6209

Indiana

Jerry Hay, USDA Rural Development
North Vernon Area Office
2600 Highway 7 North
North Vernon, IN 47265
(812) 346–3411, Ext. 4

Iowa

Jeff Kuntz, USDA Rural Development
Federal Building, Room 873
210 Walnut Street
Des Moines, IA 50309
(614) 932–3031

Kansas

Larry Carnahan, USDA Rural Development
P.O. Box 437
115 West 4th Street
Altamont, KS 67330
(620) 784–5431

Kentucky

Dewayne Easter, USDA Rural Development
771 Corporate Drive, Suite 200
Lexington, KY 40503
(859) 224–7435

Louisiana

Kevin Boone, USDA Rural Development
3727 Government Street
Alexandria, LA 71302
(318) 473–7960

Maine

Michael Rollins, USDA Rural Development
967 Illinois Avenue, Suite 4
P.O. Box 405
Bangor, ME 04402–0405

(207) 990–9125

Massachusetts/Rhode Island/Connecticut

Sharon Colburn, USDA Rural Development
Rural Energy Coordinator
451 West Street, Suite 2
Amherst, MA 01002–2999
(413) 253–4303

Michigan

Jason Church, USDA Rural Development
3001 Coolidge Road, Suite 200
East Lansing, MI 48823
(517) 324–5217

Minnesota

David Gaffaney, USDA Rural Development
410 AgriBank Building
375 Jackson Street
St. Paul, MN 55101–1853
(651) 602–7814

Mississippi

Charlie Joiner, USDA Rural Development
Federal Building, Suite 831
100 West Capitol Street
Jackson, MS 39269
(601) 965–5457

Missouri

D. Clark Thomas, USDA Rural Development
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203
(573) 876–0984

Montana

John Guthmiller, USDA Rural Development
900 Technology Blvd., Unit 1, Suite B
P.O. Box 850
Bozeman, MT 59771
(406) 585–2549

Nebraska

Cliff Kumm, USDA Rural Development
201 North, 25 Street
Beatrice, NE 68310
(402) 223–3125

Nevada

Dan Johnson, USDA Rural Development
555 West Silver Street, Suite 101
Elko, NV 89801
(775) 738–8468, Ext. 112

New Jersey

Michael Kelsey, USDA Rural Development
5th Floor North, Suite 500
8000 Midlantic Drive
Mt. Laurel, NJ 08054
(856) 787–7700, Ext. 7751

New Mexico

Eric Vigil, USDA Rural Development
6200 Jefferson Street, NE.
Room 255
Albuquerque, NM 87109
(505) 761–4952

New York

Robert Pestridge, USDA Rural Development
The Galleries of Syracuse
441 South Salina Street, Suite 357
Syracuse, NY 13202–2541
(315) 477–6426

North Carolina

H. Rossie Bullock, USDA Rural Development
Bladen County Agriculture Service Center
450 Smith Circle, Room 137
Elizabethtown, NC 28337
(910) 862–3179

North Dakota

Dale Van Eckout, USDA Rural Development
Federal Building, Room 208
220 East Rosser Avenue
P.O. Box 1737
Bismarck, ND 58502–1737
(701) 530–2065

Ohio

James Cogan, USDA Rural Development
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2418
(614) 255–2420

Oklahoma

Jody Harris, USDA Rural Development
100 USDA, Suite 108
Stillwater, OK 74074–2654
(405) 742–1036

Oregon

Don Hollis, USDA Rural Development
1229 SE Third Street, Suite A
Pendleton, OR 97801–4198
(541) 278–8049, Ext. 129

Pennsylvania

Lee Patterson, USDA Rural Development
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996
(717) 237–2189

Puerto Rico

Virgilio Velez, USDA Rural Development
IBM Building
654 Munoz Rivera Avenue, Suite 601
Hato Rey, PR 00918–6106
(787) 766–5091

South Carolina

Mike Hucks, USDA Rural Development
Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, SC 29201
(803) 253–3645

South Dakota

Gary Korzan, USDA Rural Development
Federal Building, Room 210
200 4th Street, SW.
Huron, SD 57350
(605) 352–1142

Tennessee

Dan Beasley, USDA Rural Development
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SUPPLEMENTARY INFORMATION:

Background

This solicitation is issued pursuant to enactment of the Farm Security and Rural Investment Act of 2002 (2002 Act), which established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. The 2002 Act requires the Secretary of Agriculture to create a program to make direct loans, loan guarantees, and grants to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the nation's critical energy needs. The 2002 Act also mandates the maximum percentage RBS will provide in funding for these types of projects. The RBS grant will not exceed 25 percent of the eligible project costs and will be made only to those who demonstrate financial need. Due to the time constraints for implementing this program, RBS has decided to institute only the grant program for FY 2003.

Definitions applicable to this NOFA

Agricultural Producer—An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Annual receipts—Total income or gross income (sole proprietorship) plus cost of goods sold.

Biogas—Biomass converted to gaseous fuels.

Biomass—Any organic material that is available on a renewable or recurring basis including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Capacity—The load that a power generation unit or other electrical apparatus or heating unit is rated by the manufacturer to be able to meet or supply.

Capacity Factor—The ratio of the average load on (or power output of) a generating unit or system to the capacity rating of the unit or system over a specified period of time.

Commercially Available—Systems that have a proven operating history and an established design, installation, equipment, and service industry.

Demonstrated Financial Need—The applicant must demonstrate that it is unable to finance the project from its own resources or other funding sources without grant assistance.

Eligible Project Cost—Total project costs that are eligible to be paid with grant funds.

Energy Audit—A written report by an independent, qualified entity or individual that documents current energy usage, recommended improvements and their costs, energy savings from these improvements, dollars saved per year, and the weighted-average payback period in years.

Energy Efficiency Improvement—Improvements to a facility or process that reduce energy consumption.

Financial Feasibility—The ability of the business to achieve the projected income and cash flow. An assessment of the cost-accounting system, the availability of short-term credit for seasonal business, and the adequacy of raw materials and supplies.

Grant Close Out—When all required work is completed, administrative actions relating to the completion of work and expenditures of funds have been accomplished, and RBS accepts final expenditure information.

In-kind Contributions—Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third party.

Interconnection Agreement—The terms and conditions governing the interconnection and parallel operation of the applicant's electric generation equipment and the utility's electric power system. Other services required by the applicant from the utility are covered under separate arrangements.

Leveraged Funds—The funds needed to pay for the portion of the eligible project costs of the project not paid for by a grant awarded under this program.

Other Waste Materials—Inorganic or organic materials that are used as inputs for energy production or are by-products of the energy production process.

Power Purchase Arrangement—The terms and conditions governing the sale and transportation of electricity produced by the applicant to another party. Other services are covered under separate arrangements.

Pre-commercial Technology—Technologies that have emerged through the research and development process and have technical and economic potential for application in commercial energy markets but are not yet commercially available.

Renewable Energy—Energy derived from a wind, solar, biomass, or geothermal source or hydrogen derived from biomass or water using wind, solar, or geothermal energy sources.

Renewable Energy System—A process that produces energy from a renewable energy source.

Rural—Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Small Business—A private entity including a sole proprietorship, partnership, corporation, and a cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code) but excluding any private entity formed solely for a charitable purpose, and which private entity is considered a small business concern in accordance with the Small Business Administration's Small Business Size Standards by North American Industry Classification System (NAICS) Industry found in 13 CFR 121; provided the entity has 500 or fewer employees and $20 million or less in total annual receipts including all parent, affiliate, or subsidiary entities at other locations.

Total Project Cost—The sum of all costs associated with a completed, operational project.

Grant Amounts

The amount of funds available for this program in FY 2003 is $23 million. RBS grant funds may be used to pay up to 25 percent of the eligible project costs. Half of the funds will be available for renewable energy systems and the other half for energy efficiency improvement projects. USDA may reallocate funds between the renewable energy systems and the energy efficiency improvement funds. Applications for renewable energy systems must be for a minimum grant request of $10,000, but no more than $500,000. Applications for energy efficiency improvements must be for a minimum grant request of $10,000, but no more than $250,000. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. These limits are consistent with energy efficiency improvement projects and alternative energy systems, which the Department has determined are appropriate for agricultural producers and rural small businesses. Grant limitations were based on historical data supplied from Department of Energy, Environmental Protection Agency and Rural Utilities Service on renewable energy systems and from an energy efficiency state program for energy efficiency improvements.

Applicant Eligibility

An eligible applicant must be an agricultural producer or rural small business. Individual applicants must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence. The applicant must also have demonstrated financial need. In the case of an applicant that is applying as a rural small business, the business headquarters must be in a rural area and the project to be funded also must be in a rural area. Adverse actions made on applications are appealable pursuant to 7 CFR part 11.

Project Eligibility

The proposed project must be for the purchase of a renewable energy system or to make energy efficiency

improvements and located in a rural area. The applicant must be the owner of the system and control the operation of the proposed project. A third-party operator may be used to manage the operation or proposed project. Grant funds are not for research and development; therefore, they will only be used for commercial or pre-commercial technology.

All projects financed under this NOFA must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

A proposed renewable energy system can use up to 25 percent of total energy input from a nonrenewable energy source for necessary and incidental requirements of the energy system. No other use of non-renewable energy inputs will be allowed for projects funded under this program.

Eligible projects for energy efficient improvements must conserve energy equal to 15 percent of at least the last 12 months usage and pay for itself within 11 years or less through energy cost savings.

RBS is required to assess the potential environmental impacts of a proposed action prior to commitment of Federal financial resources to the project. This environmental review is consistent with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act. Any required environmental review must be completed prior to RBS obligating any grant funds. The taking of any actions or incurring any obligations during the time of application or application review and processing which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

Environmental review will be accomplished pursuant to RBS environmental regulations found at 7 CFR part 1940, subpart G or successor regulations. A site visit will be scheduled, if necessary, to determine the scope of the review. The applicant will be notified regarding the level of review required. If an environmental review cannot be completed in sufficient time for grant funds to be obligated by September 30, 2003, grant funds will not be awarded.

Eligible and Ineligible Uses for RBS Grant Funds

RBS grant funds may be used for the following as a part of an eligible project:

1. Purchase and installation of equipment;
2. Construction or improvements;
3. Energy audits;
4. Permit fees;
5. Professional service fees;
6. Feasibility studies;
7. Business plans, and
8. Retrofitting.

Ineligible uses for RBS Grant Funds:

1. Land acquisition;
2. Capital leases;
3. Working capital;
4. Residential improvements;
5. Agricultural tillage equipment;
6. Vehicles;
7. Preparation of the grant application;
8. Waste collection;
9. Funding of political or lobbying activities;
10. Operating, maintaining, routine repairs, or fuel costs for biogas or biomass renewable energy projects;
11. Production, collection, and transportation of energy inputs;
12. Construction of a new facility except when the new facility is used for the same purpose, is approximately the same size, and, based on the energy audit, will provide more energy savings than improving an existing facility. Only the items identified in the energy audit of the existing facility will be eligible for funding. (pertains to energy efficiency projects only); and
13. Costs paid prior to an application being received by RBS except for predevelopment costs such as energy audits, feasibility studies, business plans, permit fees, or architectural and engineering fees.

Leveraged Funds

RBS grant funds may be used to pay up to 25 percent of the eligible project costs. Therefore, the applicant must provide at least 75 percent of leveraged funds to complete the project. Leveraged funds will be verified from information provided in the application. In-kind contributions and other Federal grants may not be used to meet the 75 percent requirement.

Application

Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. Applicants can only submit one application for renewable energy systems and one application for energy efficiency improvements. The maximum amount of grant assistance to one individual or entity will not exceed $750,000. The following will constitute a complete application, which must be submitted by June 6, 2003.

1. Form SF–424, ''Application for Federal Assistance.''

2. Form SF–424C, ''Budget Information—Construction Pograms.'' Each cost classification category listed on the form must be filled out if it applies to your project. Any cost category item not listed on the form that applies to your project can be put under the miscellaneous category. Attach a separate sheet if you are using the miscellaneous category and list each miscellaneous cost by not allowable and allowable costs in the same format as on the SF–424C form. All project costs must be categorized as either eligible or ineligible.

3. Form SF–424D, ''Assurances—Construction Programs.''

4. AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

5. AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements.''

6. Form RD 400–1, ''Equal Opportunity Agreement.''

7. Form RD 400–4, ''Assurance Agreement.''

8. ''Certification for Contracts, Grants and Loans,'' required by Section 319 of Public Law 101–121 if the grant is $100,000 or more.

9. If the applicant has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application, Form SF–LLL, ''Disclosure of Lobbying Activities,'' must be completed.

10. A project-specific feasibility study prepared by a qualified independent consultant will be required for all renewable energy system projects. An acceptable feasibility study must include an analysis of the market, financial, and management feasibility of the proposed project. The feasibility study must include an opinion and a recommendation by the independent consultant. Energy efficiency improvement projects do not require a feasibility study to be completed.

11. If the project involves interconnection to an electric utility, a copy of a letter of intent to purchase power, a power purchase agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.

12. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required SF–424 forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

13. Project Summary. A summary of the project proposal, not to exceed one page, must include the following: Title of the project, description of the project including goals and tasks to be accomplished, names of the individuals responsible for conducting and completing the tasks, and the expected timeframes for completing all tasks, including an operational date. The applicant must also clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements.

14. Eligibility. Describe how you meet the definition of an eligible applicant.

15. Applicant Information. All applicants must provide the following:

A. Business/farm/ranch operation.

(1) Describe ownership, including a list of individuals and/or entities with ownership interest. Provide names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(2) Describe the operation.

B. Management. Provide the resume of key managers focusing on relevant business experience.

C. Financial Information.

(1) Explanation of the demonstrated financial need for the grant.

(2) Current balance sheet and income statement prepared in accordance with generally accepted accounting principles (GAAP) and dated within 90 days of the application for rural small businesses. Agricultural producers should present financial information in the format that is generally required by commercial agriculture lenders. These items are required on the total operations of the applicant and its parent, subsidiary, or affiliates at other locations.

(3) Small business applicants must provide sufficient information to determine total annual receipts of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. Information provided must be sufficient to make a determination of total income and cost of goods sold by the business.

(4) If available, financial statements prepared in accordance with GAAP for the past 3 years, including income statements and balance sheets. Agricultural producers should present financial information for the past 3 years in the format that is generally required by commercial agriculture lenders.

(5) Financial projections to include pro forma financial statements for 3 years, with an explanation of assumptions used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year and annual for the next 2 years. The balance sheet should be annual for all 3 years. Energy efficiency improvement applicants must provide cash flow statements, income statements, and balance sheets that are annual for all 3 years. This applies to all operations of the applicant, existing and new. Financial projections are not required on any parent, subsidiary, or affiliate of the applicant.

D. Production information for renewable energy system projects.

(1) Is the technology to be employed by the facility commercially or pre-commercially available? Provide information to support this position.

(2) Describe the availability of materials, labor, and equipment for the facility.

E. Business market information for renewable energy system projects.

(1) Demand. What is the demand (past, present, and future) for the product and/or service? Who will buy the product and/or service?

(2) Supply. What is the supply (past, present, and future) of the product and/or service? Who are the competitors?

(3) Market niche. Given the trends in demand and supply, how will the business be able to sell enough of its product/service to be profitable?

16. Form RD 1940–20, ''Request for Environmental Information.'' It is strongly recommended that the applicant contact the appropriate Rural Energy Coordinator for assistance in completing this form.

17. Verification of Leveraged Funds. Applicant must provide a copy of a bank statement or a copy of the confirmed funding commitment from the funding source. Leveraged funds must be included on the SF–424 and SF–424C forms.

18. Technical Requirements/Engineer or Architect Report. Separate technical requirements exist for grants for renewable energy systems and energy efficiency improvement projects. The applicant must address the appropriate technical requirements. Two copies of the technical requirements must be submitted in order for the State Rural Development Office to submit a copy to the RBS National Office for a technical review.

A. Renewable Energy System Technical Requirements. The application must demonstrate that the system operates over its design life as expected, the owner/operator is capable of managing the system, and the vendor will provide the needed support. The following are technical requirements for renewable energy systems and will be addressed independently, in narrative form, and in the following order:

(1) Detailed Description of System. Provide a step-by-step description, based on authoritative information, of the complete system from renewable and nonrenewable energy input and inclusive of energy, byproduct, and effluent outputs. Describe the type of renewable energy source, its availability (include storage and handling of the source), and modes of delivery. Power and energy required to operate the system must also be described to determine net power and energy produced. Information on the system, if appropriate, must address utility system interconnection requirements, power purchase arrangements, and output energy storage systems. Detailed information on the actual outputs shall be addressed under system performance as outlined in the following section.

(2) System Performance. Describe the expected power and energy production of the proposed system as rated and as expected in actual field conditions. System performance must be addressed on a daily, monthly, annual, and long-term basis. Other products of the system operation shall be identified with quantity and composition produced. Effluents such as air and water, solids, and other residues shall be identified. Non-energy products with potential commercial value, such as fertilizers, soil amendments and hydrogen shall be identified.

(3) System Design Life. Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds.

(4) Use of power and energy supplied by system. Describe the uses of the electricity, heat, torque, and energy stored by the renewable energy system. Discuss how renewable energy system downtime will impact any of the uses of the renewable energy supplied by the system and how and if such energy must or can be supplied by other means.

(5) Project Costs and Timeline. Identify and itemize major project costs and a timeline and milestones for key activities, including project design, siting and permitting, system purchase, site preparation, system installation, operational testing, and decommissioning if applicable.

(6) Design qualifications. Discuss needed system designer qualifications and/or certifications in accordance with commonly acceptable or recognized organizations or bodies. If applicable,

verify that site designers are qualified and/or certified. Provide evidence that the system and installation plans conform to all applicable national, State, and local standards. Provide a list of the same or similar systems designed, installed, or supplied currently operating and with references if available. Discuss spare parts and service availability for life of the system. Describe the knowledge, skills, and abilities needed to install, service, operate, and maintain the system.

(7) Professional services required. Describe professional services and qualifications, expected professional service costs required to design, construct, operate, and maintain the system. This may include a professional engineer, an agricultural engineer, a design engineer, an environmental engineer, a lawyer, accounting, project construction, project management, or any other needed professional services.

(8) Equipment installation. Fully describe the management and plan for site development and system installation. All systems must be installed and interconnected in conformance with the system manufacturer specifications, utility system requirements, and any applicable national, State, or local codes and standards. A general contractor or a turnkey system provider must install the proposed system.

(9) Startup, shakedown, and steady state operation. Provide the appropriate start up testing procedures and test criteria. Describe testing and inspection procedures necessary before system startup and monitoring of initial operation. Estimate needed time to complete startup testing and shakedown period for system to obtain design-operating parameters at a steady state operating level. Verifiable and empirical information must be provided at startup, end of shakedown, and end of steady state operation test period.

(10) Operations and Maintenance. Describe the routine operations and maintenance requirements of the proposed system, including feedstock acquisition, transportation and handling, maintenance for the mechanical and electrical system, system monitoring and control requirements, output delivery systems, and on-going environmental compliance. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing.

(11) Potential vendor qualifications. For each vendor, provide the type of services provided, number of years they have provided the proposed services, technical support programs, and availability of spare parts.

(12) Performance assurance. Describe vendor standard warranty and performance bonds where available. The owner operator shall commit to keep the system in operating order for the design life of the system identified above. Obtain a commitment from the vendor to supply and service for the design life of the system provided. Describe available training and operation assistance available from the vendor and other sources. Construction contracts in excess of $100,000 will require a performance and payment bond for 100 percent of the contract price.

(13) A qualified professional engineer must certify numbers 1–10 of the technical requirements for renewable energy system projects exceeding $100,000 in total project cost. Vendors may prepare numbers 11 and 12 of the technical requirements. Qualifications of any preparer or certifier must be submitted with the application.

B. Energy Efficiency Improvement Technical Requirements. The application must demonstrate that the energy efficiency improvements perform over the design life as expected. Information should be supported by the energy audit, required elsewhere in this NOFA, whenever applicable. The following are technical requirements for energy efficiency improvement projects and will be addressed independently, in narrative form, and in the following order:

(1) Detailed Description of Energy Efficiency Improvement Project. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements such as improving the thermal efficiency of a storage facility and active improvements such as replacing high efficiency energy consuming equipment as separate topics. If synergisms are anticipated between active and passive improvements or other energy systems discuss these as an additional topic. Any change in on-site effluents or other byproducts shall be included in the discussion.

(2) Performance. Describe the expected energy savings of the energy efficiency improvement project. The expected energy savings must be supported by an authoritative energy audit as described elsewhere in this NOFA. Energy savings must be addressed on an annual basis. Performance may also be addressed on a seasonal basis or other periodic basis as determined and stated by the energy auditor. Discuss performance in a similar topical manner as required in paragraph 1 above.

(3) Design Life. Provide information that supports expected design life of passive and active improvements. Describe the scope and timing of major component replacement or rebuilds.

(4) Project Costs and Timeline. Identify and itemize major energy efficiency improvement project costs and a timeline and milestones for key activities, including project design, permitting, materials and equipment purchase, site preparation, and installation.

(5) Design qualifications. Discuss needed designer qualifications and/or certifications with commonly accepted or recognized organizations or bodies. If applicable, verify that designers are qualified and/or certified. Provide evidence that the energy efficiency improvement project and installation plans conform to all applicable national, State, and local standards. Describe the knowledge, skills, and abilities needed to install, service, operate, and maintain the installed materials, equipment and systems.

(6) Professional services required. Describe professional services and qualifications, expected professional service costs required to design, construct, operate, and maintain the energy efficiency improvement project. This may include a professional engineer, an agricultural engineer, a design engineer, an environmental engineer, a lawyer, accounting, project construction, project management, or any other needed services.

(7) Equipment, system and material installation. Fully describe the plan for site development, and equipment, system and materials installation. All equipment, systems and materials must be installed in conformance with applicable national, State or local codes, and standards. A general contractor or a turnkey provider must install the proposed energy efficiency improvement project.

(8) Operations and maintenance. Describe the routine operations and maintenance of the proposed energy efficiency improvement project. Include in the discussion, costs and labor associated with the operations and maintenance of the energy efficiency improvement project and plans for in and outsourcing.

(9) Potential vendor qualifications. For each vendor, discuss the type of service provided, number of years they have provided the proposed services, availability of spare parts and post sale customer support.

(10) Performance assurance. Describe vendor standard warranty and

performance bonds where available. Vendors must offer competitive warranties on products and services. The applicant shall commit to keep the energy efficiency improvement project in good repair and operating order for the design life for the energy efficiency improvement project. Describe how information will be collected and reported to meet the reporting requirements of the Renewable Energy/Energy Efficiency Grant Agreement.

(11) A qualified professional engineer or architect must certify to numbers 1–8 of the technical requirements for an energy efficiency improvement project exceeding $100,000 in total project cost. Vendors may prepare numbers 9 and 10 of the technical requirements. Qualifications of any preparer or certifier must be submitted with the application.

19. Energy Audit for Efficiency Improvements Projects:

Each application for an energy efficiency grant must include an energy audit. An energy audit is a written report by an independent, qualified entity that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and weighted-average payback period in years (total costs divided by total dollars of energy savings).

The methodology of the energy audit should meet professional and industry standards. RBS review and evaluation of the assessment is for grant purposes only and should not be considered a validation or guarantee of any technology, proposed project, cost estimate, energy savings value, or future energy costs.

The energy audit should cover the following:

A. Situation report. Give a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

B. Potential improvements. List specific information on all potential energy-saving opportunities and their costs.

C. Technical analysis. Give consideration to the interactions among the potential improvements and other energy systems:

(1) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(2) Calculate all direct and attendant indirect costs of each improvement.

(3) Rank potential improvements measures by cost-effectiveness (item 2 divided by item 1 above).

D. Potential improvement description. Give a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of project reliability and durability.

(1) Provide primary specifications for critical components.

(2) Provide preliminary drawings of project layout, including any related structural changes.

(3) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(4) Identify significant changes in future related operations and maintenance costs.

(5) Identify zoning and building code issues and required permits and licenses.

(6) Describe explicitly how outcomes will be measured.

20. Evaluation Criteria. Evaluation of the proposals will be based on the following criteria. These criteria should be individually addressed in narrative form on a separate sheet of paper. Failure to address any one of the criteria may disqualify the application.

A. Criteria for applications for renewable energy systems are:

(1) Quantity of Energy Produced. Points may only be awarded for either energy replacement or energy generation.

a. Energy replacement. If the proposed renewable energy system is intended primarily for self use by the farm, ranch, or small business and will provide energy replacement of greater than 75 percent, 20 points will be awarded; greater than 50 percent, but less than 75 percent, 15 points will be awarded; or greater than 25 percent, but less than 50 percent, 10 points will be awarded. The energy replacement should be determined by dividing the estimated quantity of energy to be generated by at least the past 12 months energy profile of the applicant. The estimated quantity of energy may be described in Btu's, kilowatts, or similar energy equivalents. Energy profiles can be obtained from the utility company.

b. Energy generation. If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded.

(2) Environmental Benefits. If the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed project is needed and required to meet the standard.

(3) Commercial Availability. If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded. Commercial availability must be discussed in the technical requirements.

(4) Cost Effectiveness. If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; 6–10 years, 20 points will be awarded; 11–15 years, 15 points will be awarded; or 16–20 years, 10 points will be awarded. The estimated return on investment should be determined by dividing the total cost of the project by the estimated projected net annual income and/or energy savings of the renewable energy system.

(5) Amount Requested. If the amount of the grant request is less than $100,000, 15 points will be awarded; $100,000–$200,000, 10 points will be awarded; or $200,001–$300,000, 5 points will be awarded.

(6) Leveraged Funds. If the applicant has provided eligible leveraged funds of over 90 percent, 15 points will be awarded; 85 percent–90 percent, 10 points will be awarded; or 80 percent–84 percent, 5 points will be awarded.

(7) Management. If the renewable energy system will be monitored and managed by a qualified third-party operator, such as pursuant to a service contract, maintenance contract, or remote telemetry, an additional 10 points will be awarded. Aspects of management must be discussed in the technical requirements.

B. Criteria for applications for energy efficiency improvements are:

(1) Energy savings. If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be 35 percent or greater, 20 points will be awarded; 30 percent–34 percent, 15 points will be awarded; 25 percent–29 percent, 10 points will be awarded; or 20 percent–24 percent, 5 points will be awarded. This will be determined by the projections in an energy audit.

(2) Cost Effectiveness. If the proposed energy efficiency improvements will

return the cost of the investment in 2 years or less, 25 points will be awarded; 3–5 years, 20 points will be awarded; 6–8 years, 15 points will be awarded; or 9–11 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the total dollars of energy savings of the energy efficiency improvements.

(3) Amount Requested. If the amount of the grant request is $10,000–$50,000, 15 points will be awarded; $50,001–$125,000, 10 points will be awarded; or $125,001–$200,000, 5 points will be awarded.

(4) Leveraged Funds. If the applicant has provided eligible leveraged funds of over 90 percent, 15 points will be awarded; 85 percent–90 percent, 10 points will be awarded; or 80 percent–84 percent, 5 points will be awarded.

Methods for Evaluating and Ranking Applications

State Rural Development Office personnel will review all applications. Ineligible and incomplete applications may be returned to the applicant and not evaluated further. Projects not financially or technically feasible will not be considered for funding. Qualified industry experts will review the technical requirements of the applications. The State Rural Development Office will score the application based on the Evaluation Criteria and submit it to the National Office to be reviewed and ranked. The National Office will rank applications based on its total score. The highest scoring applications will be selected until all the funds are depleted. Recommendations for funding will be forwarded to the Administrator of RBS, who will award the grants.

Planning and Performing Development

RBS will use 7 CFR 1780.54, 1780.57 (b)–(f) and (h)–(o), 1780.61, 1780.67, 1780.68, 1780.70, 1780.72, 1780.74, 1780.75, and 1780.76 for planning, designing, procurement methods and procedures, bidding, contract award and administration, and construction of renewable energy system and energy efficiency improvement projects as applicable. However, grantees are not authorized to construct the facility/project/improvement in total, or in part, or utilize its own personnel and/or equipment under this NOFA.

Servicing Regulations

Grants will be serviced in accordance with 7 CFR, part 1951, subpart E.

Grantee Requirements

The grantee must sign a Grant Agreement (which is published at the end of the NOFA) and abide by all requirements contained in the Grant Agreement or any other Federal statutes or regulations governing this program. Failure to follow the requirements may result in termination of the grant and adoption of other remedies provided for in the Grant Agreement.

Paperwork Reduction Act

The collection of information requirements contained in this notice have received temporary emergency clearance by the Office of Management and Budget under Control Number 0570–0044. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day comment period.

Abstract

RBS needs to receive the information contained in this collection of information to select the projects it believes will provide the most long-term economic benefit to rural areas. The selection process is competitive. RBS will ensure that the funds are used for the intended purpose.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.3 hours per response.

Respondents: Agricultural producers and rural small businesses.

Estimated Number of Respondents: 133.

Estimated Number of Responses Per Respondent: 11.

Estimated Number of Responses: 1,463.

Estimated Total Annual Burden on Respondents: 6,251 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 1, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

OMB No. 0570–0044

United States Department of Agriculture

Rural Business-Cooperative Service

Renewable Energy/Energy Efficiency Grant Agreement

THIS GRANT AGREEMENT (Agreement) dated _____, is a contract for receipt of grant funds under the Renewable Energy/Energy Efficiency program (Title IX, Section 9006 of Public Law 107–171).

BETWEEN _____ (Grantee) and the United States Of America acting through the Rural Business-Cooperative Service (RBS), Department of Agriculture (Grantor).

WITNESS:

All references herein to ''Project'' refer to installation of a renewable energy system or energy efficiency improvement located at _____. The grant is $_____ (Grant) which is _____ percent of the Eligible Project Costs.

Should actual project costs be lower than projected in the agreement, the final amount of grant will be adjusted to remain at the above percentage of the final Eligible Project Cost.

WHEREAS:

Grantee has determined to undertake the retrofitting, acquisition, construction, or purchase of a renewable energy/energy efficiency project described in the application dated _____ (Project) with a total estimated cost of $_____.

Grantee is able to finance or obtain funding from other sources for $_____.

Now, therefore, in consideration of said grant, Grantee agrees that Grantee:

Is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally

applicable requirements, including those contained in 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collections is 0570–0044. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The parties agree to all of the terms and provisions of any policy or regulations promulgated under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 as amended. Any application submitted by the Grantee for this grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by the Grantor.

The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement.

Use of Grant Funds

Will use grant funds and leveraged funds only for the purposes and activities specified in the application approved by the Grantor including the approved budget. Budget and approved use of funds are as further described in the Grantor Letter of Conditions and amendments or supplements thereto. Any uses not provided for in the approved budget must be approved in writing by the Grantor. The proposed renewable energy system or energy efficiency improvements shall be constructed/installed in accordance with any energy audit recommendations or engineering or other technical reports provided by the Grantee and approved by the Grantor.

Civil Rights Compliance

Will comply with Executive Order 12898, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This shall include collection and maintenance of data on the race, sex, and national origin of Grantee's membership/ ownership and employees. This data must be available to the Grantor in its conduct of Civil Rights Compliance Reviews, which will be conducted prior to grant closing and 3 years later, unless the final disbursement of grant funds has occurred prior to that date.

Financial Management Systems

A. Will provide a Financial Management System in accordance with 7 CFR part 3015, including but not limited to:

1. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

2. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and ensure that they are used solely for authorized purposes.

3. Accounting records prepared in accordance with generally accepted accounting principles (GAAP) and supported by source documentation.

4. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching funds usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

B. Will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after final grant disbursement, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the grant for the purpose of making audits, examinations, excerpts, and transcripts.

Procurement and Construction

A. Will comply with the applicable procurement requirements of 7 CFR part 1780 regarding standards of conduct, open and free competition, access to contractor records, and equal employment opportunity requirements.

B. Will, for construction contracts in excess of $100,000, provide performance and payment bonds for 100 percent of the contract price.

Acquired Property

A. Will in accordance with 7 CFR part 3015, hold title to all real property identified as part of the project costs, including improvements to land, structures or things attached to them. Movable machinery and other kinds of equipment are not real property (see Item 2 below). In addition:

1. Approval may be requested from Grantor to transfer title to an eligible third party for continued use for originally authorized purposes. If approval is given, the terms of the transfer shall provide that the transferee must assume all the rights and obligations of the transferor, including the terms of this Grant Agreement.

2. If the real property is no longer to be used as provided above, disposition instructions of the Grantor shall be requested and followed. Those instructions will provide for one of the following alternatives:

a. The Grantee may be directed to sell the property, and the Grantor shall have a right to an amount computed by multiplying the Federal (Grantor) share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). Proper sales procedures shall be followed which provide for competition to the extent practicable and result in the highest possible return.

b. The Grantee shall have the opportunity of retaining title. If title is retained, Grantor shall have the right to an amount computed by multiplying the market value of the property by the Federal share of the property.

c. The Grantee may be directed to transfer title to the property to the Federal Government provided that, in such cases, the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

Disposition requirements for real property shall expire 20 years from the date of final grant disbursement. This Grant Agreement covers the following described real property (use continuation sheets as necessary).

B. Will abide by the requirements of 7 CFR part 3015 pertaining to equipment, which is acquired wholly or in part with grant funds.

Disposition requirements for equipment will expire at the end of each item's useful life (which is based on a straight-line, non-accelerated method). This Grant Agreement covers the following described equipment (use continuation sheets as necessary):

Item *Useful Life*

C. Not to encumber, transfer, or dispose of the property or any part thereof, acquired wholly or in part with Grantor funds, without the written consent of the Grantor.

D. If required by Grantor, record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds, and that use and disposition conditions apply to the property as provided by 7 CFR part 3015.

Reporting

A. Will after Grant Approval through Project Construction:

1. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (Due 30 working days after end of the quarter. For the purposes of this grant, quarters end on March 31, June 30, September 30, and December 31). The financial status report must show how grant funds and leveraged funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

2. Final project development report which includes a detailed project funding and expense summary; summary of facility installation/construction process including recommendations for development of similar projects by future applicants to the program.

3. For the year(s) in which in Grant funds are received, Grantee will provide an annual financial statement (Generally Accepted Accounting Principles basis for small businesses) to Grantor.

B. Will after Project Construction:

1. Allow Grantor access to the project and its performance information during its useful life.

2. Provide periodic reports as required by Grantor and permit periodic inspection of the project by a representative of the Grantor. Grantee reports will include but not be limited to the following:

a. Purchase of Renewable Energy System Project Report. Commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years a report detailing the following will be provided:

i. Quantity of Energy Produced. Grantee to report the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents.

ii. Environmental Benefits. If applicable, Grantee to provide documentation that identified health and/or sanitation problem has been solved.

iii. Return on Investment. Grantee to provide the annual income and/or energy savings of the renewable energy system.

iv. Summary of the cost of operating and maintaining the facility.

v. Description of any maintenance or operational problems associated with the facility.

vi. Recommendations for development of future similar projects.

b. Energy Efficiency Improvement Project Report. Commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years. Grantee will report the actual amount of energy saved due to the energy efficiency improvements.

Grant Disbursement

Will disburse grant funds as scheduled. Unless required by funding partners to be provided on a pro rata basis with other funding sources, grant funds will be disbursed after all other funding sources have been expended.

A. Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Grantor. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

B. Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

C. Payment shall be made by electronic funds transfer.

C. Payment shall be made by electronic funds transfer.

D. Standard Form 271, ''Outlay Report and Request for Reimbursement for Construction Programs,'' or other format prescribed by Grantor shall be used to request Grant reimbursements.

E. For renewable energy projects, grant funds will be disbursed in accordance with the above through 90 percent of grant disbursement. The final 10 percent of grant funds will be held by the Grantor until construction of the project is completed, operational, and has met or exceeded the test run requirements as set out in the grant award requirements.

Post-Disbursement Requirements

Will own, operate, and provide for continued maintenance of the Project.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers thereunto, and the Grantor has caused this Agreement to be duly executed in its behalf by:

_____

Name:
Title:

_____

Date

United States of America

Rural Business-Cooperative Service

By: _____

Name:
Title:

[FR Doc. 03–8491 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–XU–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 9, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Water and Waste Loan and Grant Program.

OMB Control Number: 0572–0121.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste Disposal loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. The Water and Waste loan and grant program is administered through 7 CFR part 1780.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; State, local, or tribal government.

Estimated Number of Respondents: 5,800.

Estimated Number of Responses per Respondent: 8.73.

Estimated Total Annual Burden on Respondents: 134,240 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–8431 Filed 4–7–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New York Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 10:30 p.m. on Wednesday, April 9, 2003. The purpose of the conference call is to plan a community forum on civil rights issues and post-9/11 law enforcement-community relations in New York.

This conference call available to the public through the following call-in number: 1–800–659–8296, access code: 16090481. Any interested member of the public may call this number and listen to the meeting. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Tuesday, April 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 26, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8481 Filed 4–7–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of Inspector General.

Title: Applicant for Funding Assistance.

Form Number(s): CD–346.

OMB Approval Number: 0605–0001.

Type of Review: Regular submission.

Burden Hours: 625.

Number of Respondents: 500.

Average Hours Per Response: 1.

Needs and Uses: The Department of Commerce's Form CD–346 is used to assist program and grants administration officials in determining the responsibility, financial integrity, and management principles of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs of operating units in the Department.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 3, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8573 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: May 16, 2003

Time: 9 a.m. to 12 p.m. and 2:30 p.m. to 3:30 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 4830 (Room 3407 has also been reserved as a backup).

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on May 16, 2003 at the U.S. Department of Commerce.

The ETTAC will discuss administrative and trade issues including the status of trade negotiations in regards to environmental technologies trade liberalization, recent program changes at the U.S. Trade Development Agency and subcommittee action plans. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. Government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: March 31, 2003.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 03–8529 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: All contact individuals listed in the supplementary information section of this notice may be reached at the American Petroleum Institute.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Pipeline Committee

New Std 1162 Developing a Public Awareness Program for Operators

New Std 1109 Marking Liquid Petroleum Pipeline Facilities

For Further Information Contact: Andrea Johnson, Standards Department, email: *johnsona@api.org.*

Committee on Marketing

Std 2610 Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities

RP 1501 Recommended Practice for Retail or Consumer Aviation Fueling Facilities

Std 1529 Aviation Fueling Hose

RP 1626 Recommended Practice for Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Service Stations.

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Committee on Refining

Corrosion & Materials:

RP 651 Cathodic Protection of Aboveground Petroleum Storage Tanks

RP 652 Lining of Aboveground Petroleum Storage Tanks

RP 936 Refractory Installation Quality Control Guidelines

New Coke Drum Survey Report

Inspection:

Std 510 Pressure Vessel Inspection Code

Std 570 Piping Inspection Code

Pressure Vessel and Tanks:

Std 620 Design & Construction of Large, Welded, Low-Pressure Storage Tanks

Std 650 Welded Tanks for Oil Storage

Std 653 Tank Inspection, Repair, Alteration, and Reconstruction

Electrical Equipment:

RP 545 Lightening Protection for Aboveground Petroleum Storage Tanks

Mechanical Equipment:

Std 618 Reciprocating Compressors for Petroleum, Chemical, and Gas Industry Services

Piping:

Std 598 Valve Inspection and Testing

Std 591 User Acceptance of Refinery Valves

Std 609 Butterfly Valves: Double Flanged, Lug- and Wafer-Type

Instrument & Control Systems:

RP 552 Transmission Systems

Technical Data Book—Petroleum Refining:

Electronic Version of the Technical Data Book—Petroleum Refining, Release 3.0

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Meetings/Conferences: The Spring Refining Meeting will be held at the Sheraton Seattle Hotel & Towers, Seattle, Washington, April 14–16, 2003. The Fall Refining Meeting will be held at the Adams Mark Hotel, Denver, Colorado, September, 15–17, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Safety and Fire Protection

RP 752 Management of Process Hazards Associated with Location Process Plant Buildings
RP 2003 Protection Against Ignitions arising out of Static, Lightening and Stray Currents
RP 2350 Overfill Protection
Std 2510 Design, Construction & Operation of LPG Storage Facilities
RP 2220 Improving Owner and Contractor Safety Performance

For Further Information Contact: David Soffrin, Standards Department, email: *soffrind@api.org.*

Committee on Petroleum Measurement

Manual of Petroleum Measurement Standards:

Chapter 4.1 Introduction to Proving Systems
Chapter 4.3 Small Volume Provers
Chapter 4.7 Field-Standard Test Measures
New Chapter 4.9.1 Introduction to Determination of the Volume of Displacement and Tank Provers
New Chapter 4.9.2 Determination of the Volume of Displacement and Tank Provers by the Waterdraw Method of Calibration
New Chapter 4.9.3 Determination of the Volume of Displacement and Tank Provers by the Master Meter Method of Calibration
New Chapter 4.9.4 Determination of the Volume of Displacement and Tank Provers by the Gravimetric Method
Chapter 6.2 Loading Rack and Tank Truck Metering System for Non-LPG Products
Chapter 9.2 Pressure Hydrometer Test Method for Density or Relative Density
Chapter 10.3 Determination of Water and Sediment in Crude Oil by the Centrifuge Method, Laboratory Procedure
New 12.1.3 Calculation Procedures for Liquefied Petroleum Gases (New document)
New Chapter 17.9 Vessel Experience Factors
Chapter 19.2 Evaporative Loss from Floating Roof Tanks
Chapter 19.4 Speciation of Evaporative Losses

For Further Information Contact: Jon Noxon, Standards Department, email: *noxonj@api.org.*

API/ASTM/GPA standards

Chapter 9.2/ASTM D1567 Standard Test Method or Relative Density of Light Hydrocarbons by Pressure Hydrometer
Chapter 10.3/ASTM D4007 Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method
Chapter 10.6/ASTM D1796 Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method A
Chapter 11.2/GPA TP 15 A Simplified Vapor Pressure Correlation for Commercial NGLs

For Further Information Contact: Paula Watkins, Standards Department, email: *watkinsp@api.org*.

Meetings/Conferences: The Spring Committee on Petroleum Measurement Meeting will take place at the Hyatt Regency Hotel, Dallas, Texas, March 17–21, 2003. The Fall Committee on Petroleum Measurement Meeting will take place at the Wyndham Palace Hotel, Lake Buena Vista, Florida, September 29–October 3, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in these meetings.

Committee on Exploration and Production

Production Equipment:

Spec 6A Specification for Valves and Wellhead Equipment
Spec 12B Specification for Bolted Tanks
Spec 12D Specification for Field Welded Tanks
Spec 12F Specification for Shop Welded Tanks
RP 14H Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore

Oil Country Tubular Goods:

Bul 5T1 Imperfection Terminology
RP 5C5 Evaluation Procedures for Casing and Tubing Connections
RP 5A3 Thread Compounds for Casing, Tubing and Line Pipe
Spec 5L Specification for Line Pipe
RP 5B1 Threading, Gauging and Thread Inspection of Casing, Tubing and Line Pipe Threads

Offshore Structures, Drill Through Equipment, and Subsea Production Equipment:

Spec 2C Specification for Cranes
RP 2X Recommended Practice for Ultrasonic and Magnetic Examination of Offshore Structures
Spec 16A Specification for Drill Through Equipment
Spec 16D Specification for Control Systems for Drilling Well Control Systems
Spec 17E Specification for Subsea Production Control Umbilicas
New RP 17H Recommended Practice for ROVs
New 17TR2 Technical Report on aging of PA–11 in Flexible Pipes

Drilling Operations and Equipment:

Spec 4F Specification for Drilling and Well Servicing Structures
RP 7G Recommended Practice for Drill Stem Elements and Operating Limits
Spec 8C Specification for Drilling and Production Hoisting Equipment
Spec 9A Specification for Wire Rope
RP 10B Recommended Practice for Testing Well Cements
10 TR1 Technical Report on Cement Sheath Evaluation
Spec 13A Specification for Drilling Fluid Materials
RP 13C Recommended Practice for Drilling Fluid Processing Systems Evaluation
RP 13D Recommended Practice for Rheology and Hydraulics of Oil-well Drilling Fluids
RP 13E Recommended Practice for Shale Shaker Screen Cloth Designation
RP 13I Recommended Practice for Laboratory Testing Drilling Fluids
RP 13J Recommended Practice for Testing Heavy Brines Quality Systems
Spec Q1 Quality Programs for the Petroleum and Natural Gas Industry

For Further Information Contact: Mike Spanhel, Standards Department, email: *spanhel@api.org.*

Meetings/Conferences: The 2003 Summer Standardization Conference on Oilfield Equipment & Materials will take place at the Marriott Rivercenter Hotel, San Antonio, Texas, June 16–20, 2003. Interested parties may visit the API Web site at *http://www.api.org/events* for more information regarding participation in this meeting.

For additional information on the overall API standards program, contact: David Miller, Standards Department, email: *miller@api.org.*

Dated: April 2, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–8530 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103G]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat and Monkfish Oversight Committees in April, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on April 22, 2003 and April 24, 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Portsmouth, NH and Warwick, RI. *See* **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, April 22, 2003 at 9 a.m.– Habitat Oversight Committee Meeting.

Location: Courtyard Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone: (603) 436–2121.

The committee will review recommendations from the Habitat Technical Team related to Essential Fish Habitat requirements for Amendment 2 to the Monkfish Fishery Management Plan (FMP) and Amendment 1 to the Herring FMP. They will also review the recommendations from the Joint Advisory Panel and Habitat Technical Team meeting, scheduled for April 10, 2003. The purpose of this Joint Advisors meeting is to develop one habitat closed area alternative to be incorporated into both Amendment 10 to the Scallop FMP and Amendment 13 to the Multispecies FMP. The Committee will review this recommendation and preliminary analysis of this alternative.

Thursday, April 24, 2003 at 9 a.m.– Monkfish Oversight Committee Meeting.

Location: Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI; telephone: (401) 738–4000.

The Committee will discuss issues and options to be included in the Amendment 2 Draft Environmental Impact Statement (DSEIS). The Committee will also consider the recommendations of the Habitat Committee, and the enforcement analysis prepared by the Enforcement Committee. Amendment 2 alternatives being considered include, but are not limited to; permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the SFMA; separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs; counting of monkfish DAS as 24–hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed and non-directed fisheries; an exemption program for vessels fishing for monkfish outside of the EEZ (in the NAFO Regulated Area); alternative measures to minimize impacts of the fishery on essential fish habitat; measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs; and, timing of the annual review and adjustment process. The Committee may develop and recommend other management alternatives not included in the list above.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 1, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8557 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Fishery Management Plan Environmental Impact Statement Oversight Committee (EIS Oversight Committee) will hold a working meeting, which is open to the public, on the draft Groundfish Programmatic Environmental Impact Statement.

DATES: The EIS Oversight Committee working meeting will occur Tuesday, April 22, 2003, 1 p.m. to 5 p.m. and Wednesday, April 23, 2003, 8 a.m. to close of business on that day.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council office, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Kit Dahl, NEPA Specialist, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the EIS Oversight Committee meeting is to review the status of the draft Programmatic Environmental Impact Statement (PEIS), which will analyze five comprehensive alternatives to the current groundfish management program. These alternatives were developed by the EIS Oversight Committee in 2002 and adopted by the Council in October 2002. The EIS Oversight Committee will review the alternatives, descriptions of the affected environment, bycatch management requirements, proposed analytical methodologies, and other relevant information and documents. The EIS Oversight Committee will advise the drafters and analysts regarding resource indicators, important issues for analysis, schedules for review of draft sections as they are prepared, and other matters relating to preparation of the draft document. The EIS Oversight Committee will report to the Council at its June 2003 meeting.

Although nonemergency issues not contained in the EIS Oversight Committee meeting agenda may come before the committee for discussion, those issues may not be the subject of formal EIS Oversight Committee action during these meetings. EIS Oversight Committee action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EIS Oversight Committee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 1, 2003.

Theophilus R. Brainerd

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8556 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040203A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, May 5, 2003 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, May 6 through Friday, May 9.

ADDRESSES: The meetings will be held at the NMFS Southwest Fisheries Science Center, Santa Cruz Laboratory, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT working meeting is to plan strategies to effectively aid the Council in managing 2003 West Coast groundfish fisheries and Council initiatives expected to arise in 2003. Additionally, the GMT will discuss groundfish management measures in place for the spring and summer months, review new groundfish stock assessments and survey results, discuss recommended management measures for 2004 fisheries, respond to assignments relating to implementation of the Council's groundfish strategic plan, review and consider technical aspects of draft stock rebuilding plans and analyses, consider criteria for recommending mid-course corrections to harvest levels under biennial management, consider standards and criteria for Council approval of Exempted Fishing Permits, and address other assignments relating to groundfish management.

Although nonemergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 2, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8559 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103H]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC) Sub-Committee in Charleston, SC.

DATES: The meeting will take place April 23–25, 2003.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free: 866–SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The SSC Sub-Committee will meet from 1 p.m. until 5 p.m. on April 23, 2003, from 8:30 a.m. until5 p.m. on April 24, 2003, and from 8:30 a.m. until 12 noon on April 25, 2003. Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials, including stock assessments. Therefore, the purpose of this SSC Sub-Committee meeting is to prepare recommendations for presentation to the full Scientific and Statistical Committee during the June, 2003 meeting in Cocoa Beach, FL, addressing red porgy, vermilion snapper and black sea bass assessments. The SSC Sub-Committee will provide their determinations on the stock assessments, including the following: certify the assessments are based upon best available data/science and are adequate for management, develop advice on the magnitude and direction of action(s) required, interpret the assessment results and provide clearly understood conclusions, develop guidelines for the Council on assessment needs and resources to complete recommendations, and review the current Southeastern Data Assessment and Review (SEDAR) Process and offer recommendations.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the council office (*see* **ADDRESSES**) by April 21, 2003.

Dated: April 1, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8558 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092502F]

Endangered Species; File No. 1299

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Dr. Raymond Carthy has been issued a modification to scientific research Permit No. 1299.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On July 12, 2002, notice was published in the **Federal Register** (67 FR 48442) that a modification of Permit No. 1299, issued May 24, 2001 (66 FR 29934), had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The permit modification increases the take of green sea turtles from 100 each to 200 each due to the unexpected numbers of turtles caught in the research area and extends to duration of the Permit to December 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 1, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8553 Filed 4–7–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Tenth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated at the ''Agricultural Advisory Committee.'' The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Chairman James E. Newsome serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. Commissioner Walter Lukken serves as Vice-Chairman of the Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 1, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–8428 Filed 4–7–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is

this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 2, 2003.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Special Education Elementary Longitudinal Study (SEELS).

Frequency: Semi-annually, biennially.

Affected Public: Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 31,495.

Burden Hours: 15,978.

Abstract: Special Education Elementary Longitudinal Study (SEELS) will provide the first national picture of the experiences and outcomes of students in special education ages 6 through 12 at the outset of the Study. The Study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization. Data will be collected three times over a five-year period from parents, teachers, and principals of sampled students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2254. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8437 Filed 4–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 30, 2003, 8:30 a.m. to 5 p.m.; and Thursday, May 1, 2003, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; *david.thomassen@science.doe.gov*), or Ms. Shirley Derflinger (301–903–0044; *shirley.derflinger@science.doe.gov*), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda: Wednesday, April 30, and Thursday, May 1, 2003:

- Comments from Dr. Ray Orbach, Director, Office of Science.
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research.
- Extended discussion of the Strategic Plan and organization of the new Environmental Remediation Sciences Division in the Office of Biological and Environmental Research including a report from the new BERAC working group for this Division.
- Science talk—to be determined.
- Paul Bertsch, Savannah River Ecology Laboratory, workshop report.
- Lou Pitelka, Appalachian Laboratory, Report of the Biosphere 2 Center as a National Scientific User Facility.
- New business.
- Public comment (10 minute rule).

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 2, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–8517 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed changes and extension for three-years to the Forms

EIA–851, ''Domestic Uranium Production Report,'' and EIA–858, ''Uranium Industry Annual Survey.''

DATES: Comments must be filed by June 9, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Douglas Bonnar. To ensure receipt of the comments by the due date, submission by FAX (202–287–1946) or e-mail (*douglas.bonnar@eia.doe.gov*) is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1615.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Douglas Bonnar at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA–851 is a quarterly survey that collects monthly data on uranium production at conventional mills and nonconventional plants (byproduct recovery and in-situ leach plants). Published data appear in the EIA report, ''Domestic Uranium Production Report.'' The report is available at *http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/qtr_upd/qupd.html*

The Form EIA–858 is an annual survey that collects data on uranium raw materials activities (Schedule A) and uranium marketing activities (Schedule B). Data collected on these forms provide a comprehensive statistical characterization of the domestic uranium industry. Published data from these surveys are used by Congress, Federal and State agencies, the uranium and nuclear-electric industries, and the general public. Published data appear in the EIA reports, ''Uranium Industry Annual,'' and the ''Annual Energy Review.''

II. Current Actions

EIA will be requesting a three-year extension of approval to its uranium surveys with the following survey changes.

- Propose putting the EIA–858 Schedule A: Uranium Raw Material Activities survey on standby due to the small size of the U.S. uranium producer industry. The Schedule A survey is mainly a property-by-property form for about 30 U.S. companies that own/lease uranium reserves and mines, which almost all are not expected to be mined. The burden for each company to complete the Schedule A is approximately 10 hours annually and since EIA is developing new internet data collection systems for its surveys, it is difficult to justify the expense for the Schedule A with currently few active producers.
- Propose collecting annually the following data from potentially 8 U.S. uranium producers: Facility information, processing information, mine and/or other production and related information, drilling, expenditures, and employment using an EIA–851 (Annual) ''Domestic Uranium Production Report'' survey along with its current quarterly survey collection of monthly production using the EIA–851 (Quarterly) ''Domestic Uranium Production Report.'' The annual burden would be about 2 hours and the quarterly burden would remain 0.75 hours and each would be a 1-page form. Respondents would use EIA's secure file transfer system for these data collections.
- Propose renaming the EIA–858 survey from ''Uranium Industry Annual Survey'' to ''Uranium Marketing Annual Survey'' with the following changes from the EIA–858 Schedule B, Uranium Marketing Activities survey:
  - —Delete Items 1.D.2 (Custody Transactions) and 1.D.3 (Matched Sales Transactions)
  - —Delete Items 1.F.4 (Imported From) and 1.F.5 (Exported To)
  - —In Item 1.F (Future Deliveries), report quantities (Min/Max) only
  - —Add enrichment price data ($ / SWU) to Item 2, (Enrichment Services Purchased)
  - —In Item 3 inventories, report only by material types (U_3O_8, Natural UF_6, Enriched UF_6, and fabricated fuel not inserted into a reactor)
  - —Delete Item 4 (Uranium Inventory Policy)
  - —Delete Item 6.E (U_3O_8 Equivalent of secondary SWU received in exchange)

The annual burden would be about 14 hours (originally 24 hours for both Schedules A and B) and respondents would use an internet data collection system for this EIA–858 ''Uranium Marketing Annual Survey.''

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. (If the notice covers more than one form, add ''Please indicate to which form(s) your comments apply.'')

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 14 hours per response for the EIA–858, 0.75 hours per response for the EIA–851 (Quarterly), and 2 hours per response for the EIA–851 (Annual). The estimated burden includes the total time necessary

to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, on April 2, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–8515 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request, Correction

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request, Correction.

Correction—In notice document 03–7924 appearing on page 16008 in the issue of Wednesday, April 2, 2003, make the following correction:

The date in the II. Current Actions section should be 2006, rather than 2003.

Issued in Washington, DC, April 3, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–8516 Filed 4–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–544–000, FERC–544]

Proposed Information Collection and Request for Comments

April 1, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 4, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. IC03–544–000.

Documents filed electronically via the Internet can be prepared in a variety of formats including WordPerfect, MS Word, Portable Document Format, Rich Text Format of ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of documents. User assistance for electronic filings is available at 202–502–8258 or by E-mail to *efiling@fer.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller at (202)502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–544 ''Gas Pipeline Rates: Rate Change(Formal)'', is used by the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4, 5, and 16 of the Natural Gas Act (15 U.S.C.717c–717o, Pub. L. 75–688). The Commission implements FERC–544 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 154.

General rate change applications filed under section 4(e) of the Natural Gas Act reflect changes in rates based generally upon changes in the pipeline company's overall costs of providing service. Staff analyses are performed to determine whether the proposed rates and charges are consistent with the Commission's statutory responsibilities, policies, conditions. A preliminary review and report to the Commission of all changes filed under the NGA must be made by staff. Based upon the report, the Commission determines the filing should be accepted or suspended and set for hearing and investigation. 18 CFR 154.301 through 154.313 govern the filing requirements for rate changes and define the statements and schedules pipeline companies must file in support of their proposed rates and charges. 18 CFR 154.205 governs the filing requirements for changes relating to suspended tariffs, executed agreements or parts thereof. 18 CFR 154.206 permits the proposed change in rate, charge, classification or service to go into effect upon motion of the jurisdictional gas pipeline at the expiration of the

suspension period or upon receipt of the motion, whichever is later.

Formal rate change filings (FERC–544) are suspended and set for hearing. When the NGA section 4(e) filing is suspended, the rate becomes the subject of a hearing process and may go into effect subject to refund with interest. All suspended filings that go through the hearing process are considered formal cases and an investigation is instituted to determine the reasonableness of the rate filing. If the rates and charges are deemed unjust, unreasonable or unduly discriminatory, the appropriate rate, charge or service condition is ascertained. The formal proceeding is terminated by the issuance of a final Commission order.

Action: The Commission is requesting reinstatement. Due to an administrative lapse, FERC–544 was allowed to expire. The Commission seeks reinstatement of FERC–544 and a three-year approval of the collection of information.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	4,583	45,830

The estimated total cost to respondents is $2,578,841.00. (No. of hours divided by 2,080 hours per year per employee times $117,041.00 per year per average employee = $ 2,578,841.00.) The cost per respondent is $257.884.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8456 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–071]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Kerr-McGee Oil & Gas Corporation pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables), a related Lease Dedication Agreement, and the underlying transportation service agreements. ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8480 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–410–005,and RP01–8–005]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1,

the following tariff sheets to be effective April 1, 2003:

Substitute Eighth Revised Sheet No. 73
Substitute Original Sheet No. 123A
Substitute Fourth Revised Sheet No. 125
Substitute Fourth Revised Sheet No. 164
Original Sheet No. 164A
Substitute Fifth Revised Sheet No. 175
Substitute Third Revised Sheet No. 226A
Substitute Original Sheet No. 253
Original Sheet No. 253A
Second Revised Sheet No. 254
Substitute Original Sheet No. 255

MRT states that the purpose of this filing is to comply with the Commission's order issued February 26, 2003 in Docket Nos. RP00–410–002, RP00–410–003, RP01–8–002 and RP01–8–003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8460 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–005]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective February 28, 2003:

Substitute Original Sheet No. 34.
Substitute Original Sheet No. 456.
Substitute Original Sheet No. 457.

CEGT states that the purpose of this filing is to comply with the Commission's order issued March 4, 2003 in Docket Nos. RP00–482–003 and RP00–482–004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8463 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–465–002 and RP00–616–002]

CMS Trunkline LNG Company, LLC; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 28, 2003, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, the revised tariff sheets listed in Appendix A attached to the filing proposed to become effective April 1, 2003.

TLNG states that this filing is being made to comply with the Commission's Letter Order dated March 20, 2003 in Docket Nos. RP00–465–001 and RP00–616–001. TLNG also states that this filing reflects the Commission's acceptance of tariff revisions in Docket No RP02–446–000 to comply with Order No. 587–O and incorporate NAESB Version 1.5 standards in TLNG's tariff that were filed and implemented between the filing and approval of the tariff sheets in the subject docket.

TLNG's states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8462 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–142–002 and CP01–260–002]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 500B, bearing a proposed effective date of May 1, 2003.

On December 20, 2002, the Commission issued an Order Issuing Certificate, Granting Abandonment Authority, and Vacating Certificate in the above-referenced proceedings (the Certificate Order). In this order, Columbia was directed to file the project executed service agreements and a revised tariff sheet adding its project service agreements to its list of non-conforming service agreements in its tariff. In this filing, Columbia is submitting the two long-term service agreements approved by the Certificate Order, subject to the revisions directed by the Certificate Order.

In addition, Columbia is submitting two short-term or interim service agreements for service to the same customers to precede the start date of the long-term service agreements, based on the customers' request for service at the earliest possible date. These two short-term or interim agreements are non-conforming and being submitted for the Commission's approval. Thus, Columbia is submitting Service Agreement Nos. 75239, 75240, 75241, and 75242 and Fourth Revised Sheet No. 500B listing all four project service agreements as non-conforming in compliance with the Certificate Order.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8453 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–078]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 1, 2003.

Take notice that on March 26, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75236 between Columbia Gulf Transmission Company and CoEnergy Trading Company dated March 19, 2003

Transportation service is to commence April 1, 2003 and end October 31, 2003 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8470 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–079]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction.

FTS–1 Service Agreement No. 75324 between Columbia Gulf Transmission Company and Tenaska Marketing Ventures dated March 25, 2003

Columbia Gulf states that transportation service is to commence April 1, 2003 and end April 30, 2003 under the agreement.

Columbia Gulf further states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8477 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–080]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75269 between Columbia Gulf Transmission Company and EnergyUSA–TPC dated March 25, 2003

Columbia Gulf states that transportation service is to commence April 1, 2003 and end October 31, 2003 under the agreement.

Columbia Gulf further states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8478 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–081]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 2, 2003.

Take notice that on March 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75267 between Columbia Gulf Transmission Company and FPL Energy Power Marketing, Inc. dated March 21, 2003

Columbia Gulf states that transportation service is to commence April 1, 2003 and end October 31, 2003 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8479 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–316–000]

East Tennessee Natural Gas Company; Notice of Annual Cashout Report

April 1, 2003.

Take notice that on March 28, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its annual cashout report for the November 2001 through October 2002 period in accordance with Rate Schedules LMS–MA and LMS–PA.

East Tennessee states that the report reflects a cumulative net loss from cashout activity of $459,866 for the November 2001 through October 2002 reporting period. In accordance with its Rate Schedules LMS–MA and LMS–PA, East Tennessee will roll this loss forward into its next annual cashout report.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8469 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–317–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 2, 2003.

Take notice that on March 28, 2003, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the tariff sheets listed in Appendix A to the filing, to become effective April 28, 2003.

EPNG states that these tariff sheets simplify the Form of Service Agreements and provide additional contracting flexibility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8476 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–114–000]

PG&E National Energy Group, et al., Complainants, v. New England Power Pool, Respondent; Notice of Complaint

April 2, 2003.

Take notice that on March 28, 2003, PG&E National Energy Group, PG&E Generating, USGen New England, Inc., PG&E Energy Trading-Power, L.P. (PG&E NEG) and The United Illuminating Company (collectively referred to as Complainants) filed a Complaint Requesting Fast Track Processing against the New England Power Pool (NEPOOL) requesting that the Federal Energy Regulatory Commission (Commission) invalidate the March 7, 2003 action of the NEPOOL Participants Committee establishing Hydro Quebec Interconnection Capability Credits (HQICCs) for the 2004 Power Year. The complaint also requests the Commission to direct NEPOOL to set HQICCs for the 2004 Power Year at the level previously established for 2003 Power Year on an interim basis until HQICCs can be redetermined in accordance with prior Commission orders and approved by the Commission.

The Complainants state that copies of the complaint were served via facsimile and overnight mail to the Secretary of NEPOOL, as well as electronically for circulation to NEPOOL Participants, and by overnight delivery to the affected state regulatory agencies.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8472 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–006]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

April 2, 2003.

Take notice that on March 28, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a settlement agreement, pursuant to which Gulfstream and Florida Power Corporation (FPC) have agreed to execute various transportation agreements and negotiated rate agreements.

Gulfstream states that the purpose of this filing is to comply with the order issued by the Commission on July 3, 2002, in Docket Nos. RP02–361–000, *et al.* (July 3 Order). Gulfstream states that the July 3 Order rejected various

provisions contained in its original agreements with FPC and directed Gulfstream to file revised agreements with FPC that eliminated such rejected provisions or modified the provisions in accordance with the order. Gulfstream states that the instant filing complies with the directives of the July 3 Order.

Gulfstream states that copies of its filing have been mailed to all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8475 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–315–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 1, 2003.

Take notice that on March 28, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2003:

Third Revised Sheet No. 178
Third Revised Sheet No. 179
First Revised Sheet No. 179-A
Alternate Third Revised Sheet No. 178
Alternate Third Revised Sheet No. 179

Kern River states that the purpose of this filing is: (1) To expand the number of existing supply and market area pools reflected in Kern River's FERC Gas Tariff so that receipt points that are not currently included in a supply area pool can be added to an appropriate supply area pool and delivery points that are not currently included in a market area pool can be added to an appropriate market area pool; or (2) in the alternative, to add two receipt points to existing supply area pools and six delivery points to existing market area pools.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8468 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–255–001]

MIGC, Inc.; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 27, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following alternative tariff sheet, to become effective March 18, 2003:

Second Revised Title Sheet

On February 14, 2003, MIGC filed revised tariff sheets, revising its tariff to replace the physical address references with a reference to MIGC's Internet Web Site where its physical address, phone numbers and e-mail addresses are listed. This change was instigated by a change in MIGC's corporate office address. FERC issued a Letter Order on March 17, 2003 accepting the revised tariff sheets effective March 18, 2003 subject to certain conditions set forth in the Letter Order. The Letter Order directed MIGC to file within ten days of the date of the order a revised title page replacing MIGC's old physical address references with its new address references in accordance with this Commission regulation.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8465 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 1, 2003.

Take notice that on March 28, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 343 and First Revised Sheet No. 343A, to be effective April 28, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order After Technical Conference and On Rehearing issued February 27, 2003.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP01–503.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8464 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–314–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 1, 2003.

Take notice that on March 28, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 291, proposed to be effective on April 28, 2003.

Northern states that it is proposing a change to section 48.F (Daily Delivery Variance Charges-Critical Day) of the General Terms and Conditions of its tariff to clarify the notice period for calling a Critical Day on Northern's system.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8467 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 1, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–72–000, an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm sales service provided to Piedmont Natural Gas Company (Piedmont) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to Piedmont, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit ''A'' to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to Piedmont at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to Piedmont, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, Piedmont provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8454 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–73–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 1, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–73–000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of certain firm sales service provided to Piedmont Natural Gas Company (Piedmont) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to Piedmont, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit ''A'' to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to Piedmont at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to Piedmont, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, Piedmont provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8455 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–011, RP00–553–014, and RP00–481–011]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

April 2, 2003.

Take notice that on March 28, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 60A, Substitute Tenth Revised Sheet No. 60B and Substitute Ninth Revised Sheet No. 60C, which tariff sheets are proposed to be effective April 1, 2003.

Transco states that these tariff sheets are being submitted in compliance with the Commission's Order on Compliance issued March 19, 2003. The March 19, 2003 order accepted Transco's 1Line'' related filings submitted on January 31, 2003 and February 28, 2003, subject to Transco revising certain tariff sheets to clarify that the GRI surcharge will only be assessed once for a transportation service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8474 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–313–000]

Vector Pipeline L.P.; Notice of Annual Fuel Use Report

April 1, 2003.

Take notice that on March 28, 2003, Vector Pipeline L.P. tendered for filing an annual report of its monthly fuel use ratios for the period January 1, 2002 through December 31, 2002. Vector states that this filing is made pursuant to Section 11.4 of the General Terms and Conditions of the Vector Gas Tariff and Section 154.502 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8466 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–463–005 and RP00–600–003]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 1, 2003.

Take notice that on March 27, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fifth Revised Sheet No. 256, with an effective date of July 1, 2002.

Williston Basin states that Fifth Revised Sheet No. 256 filed on June 28, 2002, in Docket No. RP00–463–000, *et al.* was incorrect as it did not reflect approved tariff language. Williston Basin states that the language included in this substitute sheet correctly reflects the previously approved tariff language along with the language proposed in its June 28, 2002 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: April 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8461 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–73–000, et al.]

American Transmission Company, Inc., et al.; Electric Rate and Corporate Filings

April 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Company LLC

[Docket No. EC03–73–000]

Take notice that on March 27, 2003, American Transmission Company LLC (ATCLLC) tendered for filing an Application for Authority to Acquire Transmission Facilities Under Section 203 of the Federal Power Act. ATCLLC requests that the Commission authorize ATCLLC to acquire ownership of certain transmission facilities from the Community Development Authority of the City of Juneau, Wisconsin and Badger Power Marketing Authority, Inc. ATCLLC requests Commission authorization by April 28, 2003.

ATCLLC states that a copy of the Application has been served on the Public Service Commission of Wisconsin, the Michigan Public Service Commission and the Illinois Commerce Commission.

Comment Date: April 17, 2003.

2. Pacific Gas and Electric Company

[Docket No. ER00–565–003]

Take notice that on March 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing its supplemental filing in the Scheduling Coordinator Services Tariff (SCS Tariff) proceeding. PG&E initially filed the SCS Tariff on November 12, 1999. On January 11, 2000, the Commission accepted the SCS Tariff for filing, suspended it for a nominal period and set it for hearing. However, the Commission held hearings in abeyance pending the outcome of Docket No. ER97–2358–002. PG&E states that the parties have now requested that the SCS Tariff proceeding be reactivated. PG&E makes this supplemental filing to update the original filing. In the SCS Tariff, PG&E requests a retroactive effective date as of the commencement of the California Independent System Operator Corporation (ISO) operations (March 31, 1998). PG&E states that SCS Tariff seeks to recover the cost PG&E incurs from the ISO as Scheduling

Coordinator for certain existing transmission service customers.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission, all parties designated on the Official Service List for Docket ER00–565–000 and the ISO.

Comment Date: April 18, 2003.

3. Safe Harbor Water Power Corporation

[Docket No. ER03–423–001]

Take notice that on March 27, 2003, Safe Harbor Water Power Corporation submitted an additional explanation and support for the ratio of Accessory Electric Equipment costs to be included in its annual revenue requirement for Reactive Support and Voltage Control from Generation Sources Service in compliance with the Commission's Order dated March 12, 2003, in Docket No. ER03–423–000.

Comment Date: April 17, 2003.

4. TXU Portfolio Management Company LP

[Docket No. ER03–506–001]

Take notice that on March 28, 2003, TXU Portfolio Management Company LP (TXU Portfolio Management), tendered for filing a correction of its third revised market-based rate tariff (Tariff) that was filed on February 7, 2003. The TXU states that the correction reflects a slight change to paragraph seven (7) ''Affiliate Sales Prohibited'' of its Tariff to comply with the Commission Staff's request for a language change.

TXU Portfolio Management also tendered for filing, pursuant to Commission Staff's request, a Notice of Cancellation for TXU Energy Trading Company's second revised Tariff documenting that TXU Energy Trading Company is now operating as TXU Portfolio Management Company LP. TXU Portfolio Management requests that its third revised Tariff become effective as of January 10, 2003.

Comment Date: April 11, 2003.

5. American Electric Power Service Corporation

[Docket No.R03–662–000]

Take notice that on March 28, 2003, the American Electric Power Service Corporation (AEPSC), tendered for filing a New Network Integration Transmission Service Agreement (NITSA) for the City of Dowagiac, Michigan (Dowagiac), and Third Revised NITSA for American Municipal Power—Ohio, Inc. AEP also requests termination of NITSA No.147, an agreement with Commonwealth Edison Company for deliveries to Dowagiac that ended its initial term as of midnight February 28, 2003. AEPSC states that these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEPSC requests that these service agreements be made effective on and after March 1, 2003. AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: April 18, 2003.

6. Carolina Power & Light Company

[Docket No. ER03–663–000]

Take notice that on March 28, 2003, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with The Town of Winterville, NC. CP&L states that service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on their behalf.

CP&L is requesting an effective date of March 1, 2003 for this Service Agreement. CP&L also states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: April 18, 2003.

7. Westar Energy, Inc.

[Docket ER03–664–000]

Take notice that on March 28, 2003, Kansas Gas & Electric Company, Inc. and Westar Energy, Inc. (collectively Westar) submitted for filing a Notice of Cancellation of an Electric Power Supply Agreement between Westar Energy and the City of Erie, Kansas designated as Rate Schedule No. 164 and the City of Wathena, Kansas designated as Rate Schedule No. 217.

Westar states that copies of this filing were served on the City of Erie, Kansas; City of Wathena, Kansas and the Kansas Corporation Commission.

Comment Date: April 18, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03–665–000]

Take notice that on March 28, 2003, the Public Service Company of New Mexico (PNM) submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and an associated Network Operating Agreement (NOA) (together the Agreements) with the United States Department of Energy—Western Area Power Administration (Western), dated February 27, 2003, under the terms of PNM's Open Access Transmission Tariff (OATT). PNM states the purpose of the NITSA and NOA is to facilitate delivery of electric service by Western to meet its network load requirements on Kirtland Air Force Base in Albuquerque, New Mexico. PNM states the Agreements are the result of the Settlement Agreement reached among the Parties to FERC Docket Nos. TX00–1–001 and ER00–896–001 (and approved by FERC letter order dated April 12, 2002) and the ''Final Order Directing Transmission Services'' issued April 29, 2002 by the Commission in those same two dockets. Service under the NITSA and NOA commenced on March 1, 2003, and PNM is requesting that same date as the effective date for the Agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that a copy of this filing has been served upon the Official Service List for Docket Nos. TX00–1–001 and ER00–896–001, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: April 18, 2003.

9. Pacific Gas and Electric Company

[Docket No. ER03–666–000]

Take notice that on March 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing changes to rate schedules for electric transmission service to the following customers: Bay Area Rapid Transit District, California Department of Water Resources, Minnesota Methane LLC, Modesto Irrigation District, Sacramento Municipal Utility District, the City and County of San Francisco, California, the Transmission Agency of Northern California, Turlock Irrigation District and the Western Area Power Administration for services to Sonoma County Water Agency. PG&E states the changes include a change in the existing wholesale transmission rate methodologies and a rate change to reflect the current cost of providing transmission service to the foregoing customers.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission and the affected customers.

Comment Date: April 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8471 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 1, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor original license.

b. *Project No.:* 12423–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* American Falls Reservoir District No. 2 and Big Wood Canal Company.

e. *Name of Project:* Lateral 993 Hydroelectric Project.

f. *Location:* Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10–15 acres of Federal land managed by the Bureau.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886–2331.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice. Reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The 993 Hydroelectric Power Project would consist of: (1) A new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cfs; (3) a 10-foot-high gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72 inch diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation would be approximately 5.8 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8457 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197]

Notice of Intent To File an Application for a New License

April 1, 2003.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2197.

c. *Date Filed:* March 27, 2003.

d. *Submitted By:* Alcoa Power Generating Inc., Yadkin Division—current licensee.

e. *Name of Project:* Yadkin Falls Hydroelectric Project.

f. *Location:* On the Yadkin River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The project does not occupy federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Pat Shaver, Yadkin Public Reference Room, Penta Buildling, 48 Falls Road, Badin, NC 28009, pat.shaver@alcoa.com, (704) 422–5678.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.gov, (770) 452–3778.

j. *Effective date of current license:* May 1, 1958.

k. *Expiration date of current license:* April 30, 2008.

l. *Description of the Project:* The project consists of the following four developments:

The High Rock Development consists of the following existing facilities: (1) A 936-foot-long dam; (2) a 15,180-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 39.6 MW; and (4) other appurtenances.

The Tuckertown Development consists of the following existing facilities: (1) A 1,370-foot-long dam; (2) a 2,560-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 38.0 MW; and (4) other appurtenances.

The Narrows Development consists of the following existing facilities: (1) A 1,144-foot-long dam with a bypass spillway and channel; (2) a 5,355-acre reservoir; (3) a powerhouse containing four generating units with a total installed capacity of 108.8 MW; and (4) other appurtenances.

The Falls Development consists of the following existing facilities: (1) A 750-foot-long dam; (2) a 204-acre reservoir; (3) a powerhouse integral to the dam containing three generating units with a total installed capacity of 29.9 MW; and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8458 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2579–049]

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 1, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2579–049.

c. *Date Filed:* February 3, 2003.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Twin Branch Hydroelectric Project.

f. *Location:* The project is located on the St. Joseph River, in St. Joseph County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. David M. Shirley, Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373, (614) 223–1000.

i. *FERC Contact:* Shana High, (202) 502–8674.

j. *Deadline for filing comments and or motions:* April 21, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R, Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2579–049) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Indiana Michigan Power Company requests Commission approval to grant permission to Wyland's Marine to install thirteen removable aluminum docks along the shoreline of the St. Joseph River to create 26 seasonal boat slips within the project boundary. Wyland's Marine is a privately owned marina on the north shore of the St. Joseph River less than one mile upstream of the Twin Branch Dam and approximately one-half mile downstream of the Bittersweet Bridge river crossing.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8459 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 287–009]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–287–009.

c. *Date filed*: April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River, near the City of Dayton, in La Salle County, Illinois. The project does not affect any Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles Alsberg, Executive Vice President, North American Hydro, P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628 ext. 11.

i. *FERC Contact:* Tom Dean, (202) 502–6041, *thomas.dean@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dayton Hydroelectric Project consists of: (1) 594-foot-long arch-buttress uncontrolled fixed crest overflow concrete dam; (2) a 200-foot-long earthen embankment on the east side; (3) a 200 acre impoundment with a normal pool elevation of 498.90 msl; (4) a concrete head gate structure with four 15.5-foot-wide and 9.5 foot-high wooden gates located at the west abutment; (5) a 900-foot-long, 135-foot-wide, 10-foot-deep power canal; (6) a powerhouse containing three turbines with a total installed capacity of 3,680 kW; (7) a 150-foot-long, 2.4 kV transmission line; and (8) appurtenant facilities. The average annual generation is 14,200 megawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The EA will have at least a 30 day period for entities to file comments, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to this proposal, they should file comments during the comment period stipulated in item j above, briefly explaining the basis for their objection.

Issue Scoping Document: April 2003

Notice that application is ready for environmental analysis: June 2003

Notice of the availability of the EA: October 2003

Ready for Commission decision on the application: December 2003

o. Anyone may submit a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8473 Filed 4–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7477–8]

Announcement of a Public Stakeholder Meeting on Drinking Water Distribution Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a public meeting to discuss the finished water quality in distribution systems. The purpose of this meeting is to provide information to stakeholders and the public.

DATES: The stakeholder meeting will be held from 9 a.m. to 4:30 p.m. eastern time on Friday, May 16, 2003.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington Hotel—On Capitol Hill, at 400 New Jersey Avenue, NW., Washington DC, phone (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact: Mr. Kenneth Rotert, (202) 564–5280, e-mail: *rotert.kenneth@epa.gov*. For registration and general information about this meeting, please contact Ms. Druann O'Connor at Economic and Engineering Services, Inc., 10900 NE 4th Street, Suite 1110, Bellevue, WA 98004; by phone: (425) 452–8100; by fax: (425) 454–4189, or e-mail at *doconnor@ees-1.com*.

SUPPLEMENTARY INFORMATION: The meeting will provide stakeholders with a summary of available data, information, and research on the potential public health impacts of drinking water distribution systems.

Those registered by May 2, 2003, will receive background materials prior to the meeting. Additional information on these and other EPA activities under SDWA is available at the Safe Drinking Water Hotline at (800) 426–4791.

Meeting materials are available at *http://www.epa.gov/safewater/tcr/tcr.html*.

Any person needing special accommodations at this meeting, including wheelchair access, should contact the same previously-noted point of contact at Economic and Engineering Services, Inc., at least five business days before the meeting so that the appropriate arrangements can be made.

Same day registration for this meeting will be from 8:30 a.m. to 9 a.m. eastern time.

Dated: April 2, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–8537 Filed 4–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0137; FRL–7303–5]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public meeting of the Pesticide Program Dialogue Committee (PPDC) on April 16 and 17, 2003. An agenda has been developed and is posted on EPA's website. The following topics are planned for discussion: Improving mosquito control labeling; pesticide registration review; inert ingredients risk assessment framework implementation; and follow-up regarding alternative non-animal or reduced animal testing. Additional topics planned for presentation or as updates include the following: Endangered species, Section 18 reforms, human testing, methyl bromide, etc.

DATES: The meeting will be held on Wednesday, April 16, 2003, from 9 a.m. to 5:15 p.m., and Thursday, April 17, 2003, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA; telephone number: (703) 486–1111. The Sheraton Crystal City is one block from the Crystal City Metro Station.

FOR FURTHER INFORMATION: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: fehrenbach.margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0137. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*. An agenda has been developed and is posted at *http://www.epa.gov/pesticides/ppdc*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The PPDC is composed of 42 members appointed by EPA's Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors: Pesticide user, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia. PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy, program implementation issues, and science policy issues associated with evaluating and reducing risks from use of pesticides.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit I.B.1

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Inert Ingredients, Risk assessment.

Dated: April 3, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–8640 Filed 4–4–03; 12:43 pm]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 10, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—March 28, 2003 (Open and Closed).

B. Reports

—Rural Poverty.
—FCS Building Association Quarterly Report.
—OIG Advisory Report on the FCA Continuity of Operations Plan.
—Office of the Comptroller of the Currency Ombudsman Functions.
—Loan Growth Study.
—Farm Credit System Structure Study.
—Risk Analysis Report—First Quarter Fiscal Year 2003.

C. New Business

1. Regulations

—Credit and Related Services—Draft Proposed Rule.

2. Other

—Draft Amended and Restated Market Access Agreement—Final Approval.

Closed Session [1]

Reports

—Examination Issues.

Dated: April 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–8689 Filed 4–4–03; 2:52 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 22, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. M. Brian Yarrington, Thermopolis, Wyoming; to acquire voting shares of State Holding Company, Thermopolis, Wyoming, and thereby indirectly acquire voting shares of First State Bank of Thermopolis, Thermopolis, Wyoming.

Board of Governors of the Federal Reserve System, April 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8449 Filed 4–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

[1] Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8).

Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with Premier Bancorp, Inc., Doylestown, Pennsylvania, and thereby indirectly acquire Premier Bank, Doylestown, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. North Georgia Bancorp, Watkinsville, Georgia; to become a bank holding company by acquiring North Georgia Bank, Watkinsville, Georgia.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hume Bancshares Acquisition Corp., St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Hume Bancshares, Inc., Hume, Missouri, and thereby indirectly acquire Hume Bank, Hume, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ram Security Holdings, Ltd., Waco, Texas; to become a bank holding company by acquiring 71.20 percent of the voting shares of Security Bancshares, Inc., Waco, Texas, and thereby indirectly acquire voting shares of Citizens State Bank, Woodville, Texas.

In connection with this application, Ram Security Holdings, GP, Inc., Waco, Texas; also has applied to become a bank holding company by acquiring .5 percent of the voting shares of Ram Security Holdings, Ltd., Waco, Texas, and thereby indirectly acquire voting shares of Security Bancshares, Inc., Waco, Texas, and Citizens State Bank, Woodville, Texas.

Board of Governors of the Federal Reserve System, April 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8448 Filed 4–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meetings

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 14, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8674 Filed 4–4–03; 1:43 pm]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting; Annual Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation

4 to 5:30 p.m., April 9, 2003, U.S. Capitol, Room HC–8.

1. Call to Order
2. Welcome and Introductions
3. Approval of the Minutes of the 2002 Annual Meeting
4. Comments from President Albright: Priorities, Work Plan and Schedule for 2003
5. Report from Executive Secretary: 2003 Selection Process; Financial Report
6. Report on Truman Scholars Forum, March 22
7. Old Business
8. New Business
9. Adjournment

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–8666 Filed 4–4–03; 1:13 pm]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–37–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Revision—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background

Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance Program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

CDC and the Council of State and Territorial Epidemiologists (CSTE) collect data on disease and preventable conditions in accordance with jointly approved plans. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are

reviewed and revised based on variations in the public's health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC at variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: influenza, respiratory and enterovirus, arboviral encephalitis, rabies, Salmonella, Campylobacter, Shigella, foodborne outbreaks, waterborne outbreaks, and enteric virus. These data are essential on the local, state, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current prevention strategies, and determining the need for modifying current prevention measures.

This request is for extension of the data collection for three years. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total estimated annualized burden is 12,335 hours.

Form	No. of respondents	No. of responses/ respondent	Average burden/response (in hours)
Diarrheal Disease Surveillance:			
Campylobactor (electronic)	53	52	3/60
Salmonella (electronic)	53	52	3/60
Shigella (electronic)	53	52	3/60
Foodborne Outbreak Form (electronic)	52	25	15/60
* * * Arboviral Surveillance (ArboNet)	54	717	5/60
Influenza:			
Influenza virus (fax, Oct–May)	44	33	10/60
Influenza virus (fax, year round)	12	52	10/60
Influenza virus (electronic, Oct–May)	14	33	5/60
Influenza virus (electronic, year round)	10	52	5/60
Influenza Annual Survey	80	1	15/60
Influenza-like Illness (Oct–May)	620	33	15/60
Influenza-like Illness (year round)	130	52	15/60
Monthly Respiratory & Enterovirus Surveillance Report:			
Excel format (electronic)	25	12	15/60
Access format (electronic)	2	12	15/60
National Respiratory & Enteric Virus Surveillance System (NREVSS)	89	52	10/60
Rabies (electronic)	40	12	8/60
Rabies (paper)	15	12	20/60
Waterborne Disease Outbreak Form	60	2	20/60
* * * Cholera and other Vibrio Illness	300	1	20/60
* * * CaliciNet	30	10	10/60

Dated: March 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8485 Filed 4–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–36–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Program of Cancer Registries—Cancer Surveillance System 0920–0469—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The American Cancer Society estimates that about 1.2 million Americans will be newly diagnosed with cancer and that about 8.2 million Americans are currently alive with a history of cancer. The National Institutes of Health estimates the cost of cancer is about $172 billion including ($61 billion) direct costs to treat cancer and ($111 billion) indirect costs in lost productivity due to illness and premature death.

In 2000, CDC implemented the National Program of Cancer Registries (NPCR)—Cancer Surveillance System (CSS) to collect, evaluate and disseminate cancer incidence data collected by population-based cancer registries. In 2002, CDC published United States Cancer Statistics—1999 Incidence which provided cancer statistics for 78% of the United States population from all cancer registries whose data met national data standards. Prior to this, at the national level, cancer incidence data were available for only 14% of the population of the United States.

With this expanded coverage of the U.S. population, it will now be possible to better describe geographic variation in cancer incidence throughout the country and provide incidence data on minority populations and rare cancers to further plan and evaluate state and national cancer control and prevention efforts.

Therefore, the CDC's NCCDPHP, Division of Cancer Prevention and Control, proposes to continue to aggregate existing cancer incidence data from states funded by the National Program of Cancer Registries into a national surveillance system.

These data are already collected and aggregated at the state level. Thus the additional burden on the states is small. Funded states are asked to continue to report data to CDC on an annual basis

twelve months after the close of a diagnosis year and again at twenty-four months to obtain more complete incidence data and vital status from mortality data. The estimated annualized burden for this data collection is 126 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
State, Territorial, and District of Columbia Cancer Registries	63	1	2

Dated: March 31, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8486 Filed 4–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Notice No. ACF/ACYF/RHYP 2003–01]

Notice of Availability of Financial Assistance and Request for Applications for Runaway and Homeless Youth Program Grants

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of financial assistance and request for applications for the FY 2003 Basic Center Program for Runaway and Homeless Youth (BCP), FY 2003 Street Outreach Program (SOP), FY 2003 Positive Youth Development State and Local Collaboration Demonstration Projects (SLCDP) and FY 2004 Transitional Living Program (TLP).

The full official Program Announcement must be used to apply for grant funding under the competitive grant areas and is available by calling or writing the ACYF Operations Center at the address below: Educational Services, Inc., Attention: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036. Telephone: 1–800–351–2293, Email: *FYSB@esilsg.org;* or by downloading the announcement from the FYSB Web site at *http://www.acf.hhs.gov/programs/fysb.*

DATES: The deadline date for mailed or hand delivered applications for all four grants under this announcement is: June 9, 2003.

The Catalog of Federal Domestic Assistance: Number 93.623, Basic Center Program and State and Local Collaboration Demonstration Project; Number 93.550, Transitional Living Program; and Number 93.557, Street Outreach Program.

Application Mailing and Delivery Instructions: Applications must be in hard copy, one signed original and two copies must be submitted. Mailed applications will be considered as meeting the announced deadline if they are postmarked on or before the published deadline date. Applications handcarried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline date if they are received on or before the published deadline date, between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday (excluding Federal holidays), at the following address: Educational Services, Inc., Attention: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, telephone: 1–800–351–2293, Email: *FYSB@esilsg.org.*

This address must appear on the envelope/package containing the applications.

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applicants are cautioned that express/overnight mail service does not always deliver as agreed.

The Administration for Children and Families will not accept applications delivered by fax or e-mail regardless of date or time of submission and receipt.

Late Applications. Applications which do not meet the criteria stated above or are not received or postmarked by the deadline date are considered late applications. The Administration for Children and Families will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline. The Administration for Children and Families may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur; or when there are widespread disruptions of the mail service, or in other rare cases. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at the address and telephone number above, or for program information contact: Dorothy Pittard, Youth Services Program Specialist, Administration for Children and Families, Family and Youth Services Bureau, 330 C Street, SW., Washington, DC 20447. (202)205–8102.

Background on Runaway and Homeless Youth and Positive Youth Development

The Family and Youth Services Bureau (FYSB), within the Administration for Children and Families (ACF), administers programs that provide services to an adolescent population of runaway, homeless, and street youth. This population is estimated at 1.5 million youth. Many of these youth have left home to escape abusive situations or because they were not provided with their basic needs for food, shelter, and a safe, supportive environment. Many live on the streets or away from home without parental supervision and are highly vulnerable. They may be exploited by dealers of illegal drugs, or become victims of street violence or members of gangs which provide protection and a sense of extended family. They may be drawn into shoplifting, survival sex or dealing drugs in order to earn money for food, shelter, clothing and other daily expenses. They often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society.

On the street, these youth may try to survive with little or no contact with medical professionals, the result being that health problems may go untreated and worsen. Without the support of family, schools and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work. Furthermore, while on the streets, unsheltered youth may create challenges for law enforcement and put themselves in danger. This situation calls for a community-based positive youth development approach to

address the needs of runaway, homeless and street youth.

The Family and Youth Services Bureau has worked to promote a positive youth development framework for all FYSB activities. This approach, which is asset-based rather than problem-focused, is intended for policy and program developers, program managers, youth services professionals, and others who care about young people. It intends to enhance capacity to develop service models and approaches that direct youth toward positive pathways of development. The positive youth development approach is predicated on the understanding that all young people need support, guidance, and opportunities during adolescence, a time of rapid growth and change. With this support, they can develop self-assurance and create a healthy, successful life.

Key elements of positive youth development are:

- Healthy messages to adolescents about their bodies, their behaviors and their interactions;
- Safe and structured places for teens to study, recreate, and socialize;
- Strengthened relationships with adult role models, such as parents, mentors, coaches or community leaders;
- Skill development in literacy, competence, work readiness and social skills; and
- Opportunities to serve others and build self-esteem.

If these factors are being addressed, young people can become not just ''problem free'' but ''fully-prepared'' and engaged constructively in their communities and society.

Positive developmental opportunities should be available to all young people during adolescence. Adolescents need opportunities to fulfill their developmental needs—intellectually, psychologically, socially, morally and ethically. Youth benefit from experiential learning and they need to belong to a group while maintaining their individuality. At the same time they want and need support and interest from caring adults. They also need opportunities to express opinions, challenge adult assumptions, develop the ability to make appropriate choices, and learn to use new skills, including leadership.

These key elements result in the following outcomes:

- Increased opportunities and avenues for the positive use of time;
- Increased opportunities for positive self-expression;
- Increased opportunities for youth participation and civic engagement.

It is FYSB's hope and expectation that awareness of this positive youth development approach and its importance for serving youth will increase. The FYSB publications, Understanding Youth Development: Promoting Positive Pathways of Growth, The National Youth Summit: Summit Themes and A Strategy for Action and Reconnecting Youth and Community: A Youth Development Approach, are widely distributed as source documents for positive youth development concepts and applications. Both are currently available from the National Clearinghouse on Families and Youth (NCFY) at *http://www.ncfy.com* (301–608–8098). Additionally, a recent Statement of Principles for Positive Youth Development, endorsed by a broad range of agencies, institutions and organizations, may be found in the brochure: Toward A Blueprint For Youth: Making Positive Youth Development A National Priority. Multiple copies of this resource are available from NCFY or it can be found online at *http://www.acf.hhs.gov/programs/fysb.*

Applicants must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families and to submit the required Annual Report to the Secretary of DHHS on program activities and accomplishments with statistical summaries and other required program and financial reports, as instructed by FYSB.

Legislative Authority: Grants for Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974), as amended by the Missing, Exploited, and Runaway Children Protection Act of 1999, (Pub. L. 106–71). Text of this statute may be found at *http://www.acf.hhs.gov/programs/fysb.*

Project and Budget Periods. This announcement is inviting applications for project periods up to three to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three to five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three- to five-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

SUPPLEMENTARY INFORMATION: Grant awards for FY 2003 funds will be made by September 30, 2003, for the Basic Center Program, Street Outreach Program and Positive Youth Development State and Local Collaboration Demonstration Projects. Transitional Living Program grant awards for FY 2004 will be made after September 30, 2003.

The estimated funds available for new starts and the approximate number of new grants that may be awarded under this program announcement are as follows:

Competitive grant area	New start grants funds available	Estimated Number of new grants
A. BCP	Up to $12,300,000	Up to 100.
B. TLP	Up to $7,900,000	Up to 42.
C. SOP	Up to $4,600,000	uup to 46.
D. SLCDP	Up to $1,500,000	Up to 13.

In addition to the new start grants, the Administration for Children and Families has provided for noncompetitive continuation funds to current grantees in the following programs:

Grant area	Noncompetitive continuation funds	Number of grants
A. BCP	Up to $31,400,000	Up to 265.
B. TLP	Up to $27,800,000	Up to 149.
C. SOP	Up to $8,900,000	Up to 91.

Grant area	Noncompetitive continuation funds	Number of grants
D. SLCDP	$ -0-	0

Part I. Commpetitive Grant Areas and Summaries of Evaluation Criteria

A. Basic Center Program (Competitive Grant Area A, CFDA# 93.623)

Program Purpose, Goals and Objectives: The purpose of part A of the RHY Act is to establish or strengthen locally-controlled, community-based programs that address the immediate needs of runaway and homeless youth and their families. Services must be delivered outside of the law enforcement, child welfare, mental health and juvenile justice systems. The program goals and objectives of the Basic Center Program of part A of the RHY Act are to:

- Alleviate problems of runaway and homeless youth;
- Reunite youth with their families and encourage the resolution of intra-family problems through counseling and other services;
- Strengthen family relationships and encourage stable living conditions for youth; and
- Help youth decide upon constructive courses of action.

Background: The Runaway and Homeless Youth Act of 1974 was a response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center program is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen (15) days; food; clothing; individual, group and family counseling; aftercare and referrals, as appropriate. Basic Center programs are required to provide their services in residential settings for at least four (4) youth and no more than twenty (20) youth. Some programs also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location. Basic Center programs shelter youth at risk of separation from the family who are less than 18 years of age, and who have a history of running away from the family. Basic Centers must provide age appropriate services or referrals for homeless youth ages 18–21.

The primary presenting problems of youth who receive shelter and non-shelter services through FYSB-funded Basic Centers include: (1) Family conflicts; (2) physical, sexual and emotional abuse; (3) divorce, death, or sudden loss of income; and (4) personal problems such as drug use, problems with peers, school attendance and truancy, bad grades, inability to get along with teachers and learning disabilities.

Eligible Applicants

- Public agencies—any State, unit of local government, Indian tribes and tribal organizations, and/or combinations of such units;
- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Current Basic Center grantees with project periods ending on or before September 29, 2003, and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Current Basic Center Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2003 may not apply for a new Basic Center grant for the community they currently serve. These grantees will receive instructions from their respective ACF Runaway and Homeless Youth (RHY) Regional Office contacts on the procedures for applying for noncompetitive continuation grants. Current grantees that have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Youth Contact, listed in part V, Appendix B, of the full official Program Announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds, the Family and Youth Services Bureau expects to award up to $12,300,000 for up to 100 new competitive Basic Center Program grants. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18, according to the latest census data. A minimum of $100,000 will be awarded to each State, the District of Columbia and Puerto Rico. A minimum of $45,000 will be awarded to each of the four insular areas: Guam, American Samoa, the Commonwealth of the Northern Marianas and the Virgin Islands.

The funds available for continuations and new starts in each State and insular area are listed in the Table of Allocations by State (part V, Appendix D) located in the full official program announcement. In this Table, the amounts shown in the column labeled ''New Starts'' are the amounts available for competition under this announcement. The number of new awards made within each State depends upon the amount of the State's total allotment less the amount required for non-competing continuations, as well as on the number of acceptable applications. Therefore, where the amount required for noncompeting continuations in any State equals or exceeds the State's total allotment, it is possible that no new awards will be made. However, agencies in the States where zero funding is reflected on the BCP Table of Allocation are highly encouraged to apply for grant funding in the event that additional funding becomes available.

All applicants under this competitive grant area will compete with other eligible applicants in the State in which they propose to deliver services. In the event that there are insufficient numbers of applications approved for funding in any State or jurisdiction, the Commissioner of ACYF will reallocate the unused funds to other Basic Center Program applicants.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year which equals a maximum of $600,000 for a 3-year project period.

Applicant Share of Project Costs: The applicant must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with ''638'' funding pursuant to Public Law 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $600,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must provide a match of at least $60,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal

funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Basic Center programs of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompetitive continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

B. Transitional Living Program (Competitive Grant Area B, CFDA#93.550)

Program Purpose, Goals and Objectives: The overall purpose of the Transitional Living Program (TLP) for homeless youth is to establish and operate transitional living programs for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living programs provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

Transitional Living Programs are required to provide services in residential settings for at least four (4) youth and no more than twenty (20) youth. Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults, including pregnant and parenting homeless youth. Goals, objectives and activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

- Providing stable, safe living accommodations while a homeless youth is a program participant;
- Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
- Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
- Providing homeless youth with appropriate referrals and access to medical and mental health treatment;
- Providing the services and referrals necessary to assist youth in preparing for and obtaining employment;
- Providing the services and referrals necessary to assist youth in preparing for and obtaining secondary, and where feasible, post-secondary education and/or vocational training; and
- Providing the services and referrals necessary to assist pregnant and parenting homeless youth with the skills and knowledge necessary to become a more effective parent and lead productive and independent lives.

Background: It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that the youth cannot return home or to another safe living arrangement with a relative. Other homeless youth have ''aged out'' of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot meet the youth's basic human needs (shelter, food, clothing), let alone provide the supportive and safe environment needed for the healthy development of self-image and the skills and personal characteristics which would enable them to mature into a self-sufficient adult.

Homeless youth, lacking a stable family environment and without social and economic supports, are also at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth are in need of a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to self-sufficiency and to become a productive member of society.

Pregnant and parenting homeless youth are likely to face poverty, low levels of educational attainment, and long-term dependence on public assistance. Research indicates that children of teenage mothers are more likely to be born prematurely and to be of low birth weight than children born to women who are older. Compared to children born to older women, children of adolescent mothers, in general, do not do as well in school, have higher reported incidences of abuse and neglect, have higher rates of foster care placement, and are more apt to run away from home. As these children get older, the boys are 2.7 times more likely to be involved in criminal behavior, and the girls are 33 percent more likely to become teenage mothers themselves, increasing the likelihood that they will rely on public assistance.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

Eligible Applicant

- Public agencies—any State, unit of local government, Indian tribes and tribal organizations, and/or combinations of such units;
- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Current TLP grantees (including subgrantees) with project periods ending on or after September 30, 2003, and all other eligible applicants not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement for awards in FY 2004.

Current TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year 2003 may not apply for a new TLP grant under this announcement. These grantees will receive instructions from their respective Administration on Children and Families (ACF) Regional Office Youth Contact on the procedures for applying for non-competitive continuation grants. Current grantees, which have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Runaway and Homeless Youth Contact, listed in part V, appendix B, of the full official Program Announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds, the Family and Youth Services Bureau expects to award up to $7,900,000 for up to 42 new

competitive Transitional Living Program grants for fiscal year 2004. The funding is to provide shelter, skill training and support services to assist homeless youth, including pregnant and parenting youth, in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year, which equals a maximum of $1,000,000 for a 5-year project period.

Applicant Share of Project Cost: Transitional Living grantees must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with ''638'' funding pursuant to Public Law 93–638, under which certain Federal grants funds may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the same purposes for which grants under section 638 are made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a five-year project costing $1,000,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must include a match of at least $100,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Transitional Living projects of up to five years (60-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompeting continuation grants beyond the one-year budget periods, but within the 60-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

C. Street Outreach Program (Competitive Grant Area C, CFDA #93.557)

Program Purpose, Goals and Objectives: The overall purpose of SOP is to provide education and prevention services to runaway, homeless and street youth who have been subjected to or are at risk of sexual exploitation or abuse. The goal of the program is to establish and build relationships between street youth and program outreach staff in order to help youth leave the streets. The objective of the program is to provide support services that will assist the youth in moving and adjusting to a safe and appropriate alternative living arrangement. These services include, at a minimum, treatment, counseling, and provision of information and referral services. Street outreach programs must have access to local emergency shelter space that is an appropriate placement for young people and that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain interaction with the youth during the time they are in the shelter.

Background: In response to the needs of street youth who are subjected to or at risk of sexual exploitation or abuse, Congress amended the Runaway and Homeless Youth Act by authorizing the Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless and Street Youth Program under the Violent Crime Control and Law Enforcement Act of 1994. This program is referred to as the Street Outreach Program (SOP) for Runaway, Homeless and Street Youth.

The array of social, emotional and health problems faced by youth on the street is dramatically compounded by the incidence of sexual exploitation and/or abuse. Street youth are victimized by strangers as well as by individuals known to the youth, and a significant number of homeless youth are exploited as they participate in survival sex to meet their basic needs for food and shelter. Because of these issues, sexually exploited youth often need more intensive services. Youth must be afforded the opportunity to slowly build trust relationships with caring and responsible adults as the first step to successfully encouraging them to leave the streets.

Eligible Applicants

- Private nonprofit agencies; and
- Community-based and faith-based organizations.

Note: Public agencies are NOT eligible to apply for these funds.

Current Street Outreach Program grantees with project periods ending on or before September 29, 2003, and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2003 may not apply for a new Street Outreach grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants. Current grantees, which have questions regarding their eligibility to apply for new funds, should consult with the appropriate Regional Office Youth Contact, listed in part V, appendix B, located in the full official program announcement to determine if they are eligible to apply for a new grant award.

Funding: Depending on the availability of funds the Family and Youth Services Bureau expects to award up to $4,600,000 for up to 46 new competitive Street Outreach Program grants for street-based outreach and education.

Federal Share of Project Costs: Applicants may apply for up to $200,000 in Federal support each year, a maximum of $600,000 for a 3-year project period. The maximum Federal share of project costs is $200,000 for 12 months.

Applicant Share of Project Cost: Street Outreach grantees must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $600,000 in Federal funds (based on an award of $200,000 per 12-month budget period) must provide a match of at least $60,000 ($20,000 per budget period). Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for noncompeting continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

D. Positive Youth Development State and Local Collabortion Demonstration Projects (Competitive Grant Area D, CFDA #93.623)

Program Purpose, Goals and Objectives: This demonstration represents a continuation of the investment FYSB has made to sponsor collaborative approaches to positive youth development in the 13 States over the past several years. Under the Youth Development State Collaboration Demonstration projects the focus was on establishing partnerships and collaborative efforts particularly among State-level agencies and actors. Projects solicited in this announcement are specifically aimed at moving the earlier State-level successes to the level of local community jurisdictions (and/or tribes). Specifically, these project grants are intended to support collaboration between State governments and local community jurisdictions or tribes. States may propose a program of joint cooperation between a tribe and another local jurisdiction.

At least one operating RHY program must be in the local community jurisdiction or Tribe selected by the State government for the joint collaboration demonstration project in order to:

- Continue the earlier FYSB-funded efforts to promote the positive development of youth, and
- Pilot test an effort to extend that work down to the level of local communities.

As such, the goals of the Positive Youth Development State and Local Collaboration Demonstration Projects are: (1) To encourage collaboration among the State and Local (or Tribal) agencies and communities that will increase opportunities for positive youth development for young people in local communities and neighborhoods; (2) to promote and facilitate communication and cooperation between the State, local communities and youth serving agencies, including FYSB RHY Program grantees, in addressing the needs and issues of adolescents and young adults; (3) to encourage an ongoing community presence and participation in the planning and execution of strategies aimed at the positive development of their young people; (4) and to energize local constituencies including residents, community and faith-based organizations and service providers around a positive youth development agenda.

The overarching aim of these pilot efforts will be to help States to explore new collaborative relationships with local communities that will prove effective in increasing the number and array of positive development opportunities available to young people. Beginning a dialogue with the participating local community or Tribe, and sustaining their ongoing involvement and participation in this collaboration, will be viewed as critical to effectiveness of the demonstration's collaboration and to its efforts to pursue the programmatic objectives (*see* below) outlined for this demonstration. As such, this community involvement is stressed throughout this announcement.

The SLCDP Demonstration Project is focused on increasing opportunities for positive youth development in local jurisdictions and communities. Funded projects in this demonstration will be based on collaborative program designs that emphasize each of the following three major programmatic objectives for fostering positive youth development and positive youth outcomes.

- *Increased opportunities and avenues for the positive use of time including:* Recreational activities, organized sports, educational and personal enrichment, volunteerism and/or age-appropriate employment. (Safe places with structured activities during non-school hours; marketable skills through effective education; ongoing relationships with caring adults-parents, mentors, tutors, or coaches.)
- *Increased opportunities for positive self-expression:* Higher emphasis on helping young people identify and develop their strengths and talents and to exercise them in positive ways where they can be recognized and celebrated by the larger community of young people and adults. (Healthy start and future.)
- *Increased opportunities for youth participation and civic engagement:* Efforts to provide youth with opportunities to participate in school and community affairs and to be represented among the actors and within the institutions that constitute the political, social and economic infrastructure of their school, community, city and region. (Opportunities to give back through community service.)

These project grants will serve as the basis for exploring new partnerships among the Family and Youth Services Bureau (FYSB), States, local jurisdictions and/or Tribes, and community and faith-based, youth serving organizations in order to establish and support these programmatic objectives at the State and local community levels.

The demonstration will be conducted in two phases:

- Phase I, the Planning Phase will begin on September 30, 2003, through September 29, 2004, and will consist of the first 12 months of the grant.
- Phase II, the Implementation Phase will begin September 30, 2004, and will continue for the remaining four years ending on September 29, 2008.

The Planning Phase: The demonstration will begin with a one-year planning phase. State grantees will use this phase to accomplish three specific formative goals that will shape the 4-year implementation effort: (1) Identify and secure commitment(s) from the local jurisdiction and/or Tribe, and the RHY Programs that will be the collaborating partners during the implementation phase; (2) conduct a collaborative planning process focusing on strategies for pursuing the three programmatic objectives set forth (above) for the demonstration; and (3) review and finalize the proposed plans for implementation with FYSB:

- Select the Local Partner: The first three months (1–3) of the planning phase will be used to identify a local jurisdiction (or Tribe)—city, community or neighborhood—that is willing and able to assume the role of local partner in this demonstration. The product of this first three-month period will be a Memorandum of Understanding (MOU) between the applicant and the organization/entity assuming the lead role, as the local collaboration partner, committing each of the parties to participate in the 5-year FYSB funded SLCDP Demonstration Project.
- Draft the Plan: The next six months (4–9) of the planning phase will be used to conduct the outreach, convene the meetings, and engage the deliberations that are necessary to produce a plan outlining proposed directions for pursuing each of the three youth development programmatic objectives outlined above.
- Finalize the Plan: The final three months (10–12) will be a period of dialogue and negotiations with FYSB representatives to refine and further develop these plans and preliminary directions into an approved plan and budget for implementing the 4-year implementation collaborative effort.

The Implementation Phase: FYSB plans to fund four years of State/local operation under the approved plan. Continuation funding will be based on availability of funds and satisfactory progress made during the first year Planning Phase. It is expected that operations under the grant will feature adherence to the three youth development programmatic objectives outlined above as well as the following:

• Continued and ongoing high level collaboration among a consistent group of State, local and RHY program representatives of the project.

• Involvement of parents, guardians, other caring adults and youth in all phases of development and implementation of the youth development strategies.

• Ongoing dialogue, communications and participation with and among residents from the neighborhoods and communities targeted by the effort.

Background: For a number of years, FYSB has been promoting a youth development philosophy and has produced a framework for implementing a positive youth development approach. The framework can be used by program developers, program managers and youth service professionals in developing and implementing service models and approaches that will redirect youth in high risk situations toward positive pathways of development. We have identified four key principles that are important in the development of young people as they move toward a successful and productive adulthood: (1) A sense of industry and competency, (2) a feeling of connectedness to others (particularly to caring adults, especially parents), and to society, (3) a belief in their control over their fate in life, and (4) a stable identity.

FYSB supports the youth development approach and believes it is crucial that positive developmental opportunities be made available to all young people during adolescence, a time of rapid growth and change. Adolescents need opportunities to fulfill their developmental needs; intellectually, psychologically, socially, morally and ethically. Youth benefit from experiential learning and they need to belong to a group while maintaining their individuality. At the same time, they want and need adult support and interest. They also need to express opinions, challenge adult assumptions, develop the ability to make appropriate choices and learn to use new skills.

When young people are not given positive outlets for growth, they may find potentially damaging alternatives. Gang membership, for example, may address an adolescent's need for safety and ''belonging to'' a group, close friendships and opportunities for exercising decision-making skills and responsibility. However, it also places young people at high risk for drug use and exposure to violence and crime. In contrast, positive developmental opportunities meet adolescent needs while decreasing their exposure to destructive influences and reducing their involvement in risky behaviors.

A rapidly changing society and a decreasing sense of community have reduced or eliminated many of the traditional ways that young people receive the support they need to move toward maturity and self-sufficiency. Additionally, increasing violence and hopelessness in many neighborhoods threaten young people's welfare and make developmental opportunities scarce in some communities. In such environments, a commitment by a community to creating programs and services that meet young people's developmental needs is critical.

Programs with a youth development focus offer young people the skills, knowledge and community support they need to function effectively. The youth development approach is designed to focus on the positive outcomes desired by young people, not the negative outcomes that adults hope to prevent. The distinction may appear subtle, but it is a significant shift in policy and practice. Youth development moves the dialogue from one that focuses on youth with problems to one in which youth are seen as resources. In addition, youth development envisions a community effort to determine and provide, in concert with youth, the assistance and support youth need to grow into healthy adults. With all of these principles in mind FYSB began to invest resources in helping States make a difference in the lives of their young people.

Beginning in 1999, the nine State agencies listed below were awarded grants by FYSB, under the Youth Development State Collaboration Demonstration Project, to establish collaboration efforts around youth development at the State level.

- Department of Economic Security, State of Arizona
- Department of Human Services, State of Colorado
- Office of Policy and Management, State of Connecticut
- Department of Human Rights, State of Iowa
- Department of Human Resources, State of Maryland
- Executive Office of Health and Human Services, Commonwealth of Massachusetts
- Health and Human Services, State of Nebraska
- Office of Children and Family Services, State of New York
- Commission on Children and Families, State of Oregon

In 2001, a second cohort of four States agencies was also funded to pursue the goals of this demonstration as follows:

- Bureau of Youth Services and Delinquency Prevention, State of Illinois
- Indiana Human Resources Investment Council, State of Indiana
- Louisiana Workforce Commission, State of Louisiana
- University of Kentucky, Cooperative Extension 4H Program, State of Kentucky

In the ensuing years, these States' activities have included: Assessing existing statewide policies and procedures to determine how best to integrate youth development principles into current approaches; providing training on the youth development approach; involving young people in program and policy development; organizing region, State, or community-wide conferences and forums; making subgrants that promote youth development activities; creating new outlets for sharing information on youth development such as home pages on the Internet's World Wide Web; developing and supporting statewide coalitions of agencies serving runaway and homeless youth; and identifying data to measure positive outcomes.

The limited competition among the same 13 State organizations with demonstration projects solicited in this competitive area seeks to build on their prior work accomplishments to create new and stronger partnerships between the State agencies listed above and one local jurisdiction or Tribe, as a potential model for identifying effective practices that can guide future State and local intergovernmental partnerships and collaborative efforts to promote the positive development of young people.

Eligible Applicants: This competition is limited to the 13 State organizations that are currently participating in the Youth Development State Collaboration Demonstration Project funded by FYSB. They are: Arizona (AZ), Colorado (CO), Connecticut (CT), Iowa (IA), Illinois (IL), Indiana (IN), Kentucky (KY), Louisiana (LA), Massachusetts (MA), Maryland (MD), Nebraska (NE), New York (NY), and Oregon (OR).

Funding: Depending on the availability of funds the Family and Youth Services Bureau expects to make up to 13 awards to support State and local collaborations according to the following schedule:

• Year 1 Planning Phase Grant: FYSB expects to award up to $120,000 to each grantee to support the 12-month Planning Phase.

• Years 2–5 Implementation Phase Grants: Over the next four years, FYSB expects to award up to $1,000,000 ($250,000/yr) to each grantee to support

the implementation of programs and activities proposed in their proposed plans and approved by FYSB.

Federal Share of Project Costs: Applicants may apply for support in accordance with the schedule outlined above for a total of $1,120,000 over the 5-year demonstration period ($120,000 in year 1; and $1,000,000 over the four years—2 through 5).

Applicant Share of Project Costs: The applicant must provide a non-Federal share or match of at least ten percent (10%) of the Federal funds awarded. (There may be certain exceptions for Tribes with ''638'' funding pursuant to Public Law 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, an applicant requesting $120,000 must match the federal funds with a non-Federal share of at least $12,000. It is expected that these matching resources will be budgeted for and made available in the same 12-month program period in which federal resources are provided. Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in a disallowance of Federal funds.

Duration of Project: This announcement solicits applications for Positive Youth Development State and Local Collaboration Demonstration Projects of up to five years (60-month project period) beginning September 30, 2003 through September 29, 2008. Grant awards will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the longer term project period, will be entertained in subsequent years on a noncompetitive or competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the interest of the government.

Summary of Evaluation Criteria for Competitive Areas A, B, C and D (BCP, TLP, SOP and SLCDP)

Criterion 1: Objectives and Need for Assistance (15 points)

Applications will be judged on how clearly they identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly Stated. Applications will need to specify the goals and objectives of the project and how implementation will fulfill the purposes of the program. Applications should describe the conditions of youth and families in the area to be served; the incidence and characteristics of runaway, homeless or street youth and their families; the existing support systems for at-risk youth and families in the area, including other agencies providing services to runaway and homeless youth in the area.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Expected (20 points)

Applications will be judged on how clearly they identify the results and benefits to be derived, specify services to be provided, who will receive services, where and how these services will be provided, and how the services will benefit the youth families and the community to be served.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Approach (35 points)

Applications will be judged on how clearly they outline a plan of action which: Describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approach rather than others. Applications are encouraged to describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applications will be judged on the extent to which they describe the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities. Applicants will be expected to list organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; describe formal service linkages and plans for coordination with other agencies; describe plans for conducting outreach and encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic, religious and racial backgrounds and sexual orientations. Applicants are encouraged to describe the type, capacity and staff supervision of the shelter that will be available for youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 points)

Applicants will be judged on whether they provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed. Applicants will be expected to list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

Applicants will be expected to provide information on plans for training project staff as well as staff of cooperating organizations and individuals and State the expected or estimated ratio of staff to youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organizational Profile (10 points)

Applicants will be expected to provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial Statements, audit reports or Statements from CPAs/Licensed Public Accountants. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Applicants will be expected to provide a plan for project continuance beyond grant support, including a plan for securing resources and continuing project activities after Federal assistance has ceased and an annotated listing of applicant's funding sources. Such plans should include written agreements, if applicable, between grantees and subgrantees or subcontractors or other cooperating entities and letters of support and statements from community, public and commercial leaders that support the project proposed for funding.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 points)

Applicants will be expected to provide a detailed line item budget and a narrative budget justification that describes how the categorical costs are derived. Applicants will be judged on how clearly they discuss the necessity, reasonableness, and allocability of the proposed costs and how clearly they describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Part II. Notification Under Executive Order 12372—State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs'', and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. (**Note:** State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.)

As of January 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Note: Inquiries about obtaining a Federal grant should not be sent to OMB.

Dated: April 2, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–8430 Filed 4–7–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; 2003 California Health Interview Survey (CHIS) Cancer Control Module (CCM)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 3, 2002, pages 62067 and 62068 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: 2003 California Health Interview Survey (CHIS) Cancer Control module (CCM). Type of Information Collection Request: New. Need and Use of Information Collection: NCI sponsored a Cancer Control Modules to the National Health Interview Survey (NHIS) and to the California Health Interview Survey (CHIS) administered in 2000. While the NHIS data have proven extremely useful in monitoring risk factors and screening related to cancer control, the national sample does not provide adequate numbers of racial-ethnic minorities to analyze particular domains within them, such as age by gender and income or education. The CHIS telephone survey, administered for the first time in 2000–2001, is designed to provide population-based, standardized health-related data for California counties. Initiated by the California Department of Health Services (CDHS) Center for Health Statistics, the Public Health Institute (PHI), and the UCLA Center for Health Policy Research (UCLA), the survey is largely funded by California sources. The 2000 CHIS CCM is similar in content to the 2000 NHIS CCM, and met its target of one sample adult in 55,000 households. California, the most populous state in the Nation, is also the most racially and ethnically diverse. Specific populations of interest include Black or African American, Hispanic or Latino, Asian, Native Hawaiian or Other Pacific Islander, and American Indian or Alaska Native. The CHIS data was released in July 2002. NCI is using the CHIS and NHIS data from 2000/2001 to better estimate health-related behaviors and cancer risk factors for smaller racial/ethnic minority populations. Preliminary analyses suggest that the CHIS will provide improved estimates for cancer risk factors and screening

among racial/ethnic minority populations. NCI will sponsor questions on cancer screening in the 2003 NHIS and to provide better estimates for smaller racial-ethnic minority populations, anticipates also sponsoring cancer screening questions on the 2003 CHIS. NCI will also take advantage of the Housing and Environment Module to be included in the 2003 CHIS to ask respondents questions about environmental tobacco smoke and physical activity.

Frequency of response: One-time. *Affected public:* Individuals. *Types of Respondents:* U.S. adults. The annual reporting burden is as follows:

A.12–1 ESTIMATES OF HOUR BURDEN—2003 CHIS CANCER CONTROL MODULE

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Adult Individuals—Pilot	150	1	.09	13.50
Adult Individuals—Survey	55,000	1	.09	4,950.00
Total Annual Hour Burden				4,963.50

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, Ph.D., Project Officer, National Cancer Institute, EPN 4005, 6130 Executive Boulevard MSC 7344, Bethesda, Maryland 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *breenn@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 28, 2003.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–8425 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Extramural Loan Repayment Program for Clinical Researchers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Extramural Loan Repayment Program for Clinical Researchers (LRP–CR). The Loan Repayment Program for Clinical Researchers, which is authorized by section 487F [1] of the Public Health Service (PHS) Act (42 U.S.C. 288–5a), as added by the Clinical Research Enhancement Act of the Public Health Improvement Act of 2000 (Public Law 106–505), provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct clinical research. The Loan Repayment Program for Clinical Researchers provides for the repayment of up to $35,000 of the principal and interest of the extant educational loans of such health professionals for each year of obligated service. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. The purpose of the Loan Repayment Program for Clinical Researchers is the recruitment and retention of highly qualified health professionals as clinical investigators. Through this notice, the NIH invites qualified health professionals who contractually agree to engage in clinical research for at least two years, and who agree to engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the NIH Loan Repayment Program for Clinical Researchers.

DATE: Interested persons may request information about the Loan Repayment Program for Clinical Researchers on April 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by email (*jm40z@nih.gov*), by fax 301–402–0169, or by telephone 301–496–4607 (not a toll-free number). For program information contact Marc S. Horowitz, email *lrp@nih.gov,* or telephone 301–402–5666 (not a toll free number). Information regarding the requirements, application deadline dates, and an on-line application for the Clinical Research Loan Repayment Program may be obtained at the NIH Loan Repayment Program Web site, *http://www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION: The Clinical Research Enhancement Act, which is contained in the Public Health Improvement Act of 2000 (Pub. L. 106–505), was enacted on November 13, 2000, adding section 487F of the PHS Act (42 U.S.C. 288–5a). Section 487F authorizes the Secretary, acting through the Director of the NIH, to carry out a program of entering into contracts with

[1] So in the law. There are two sections 487F. Section 205 of Public Law 106–505 (114 Stat. 2329), inserted section 487F after section 487E. Previously, section 1002(b) of Public Law 106–310 (114 Stat. 1129), which relates to a Pediatric Research Loan Repayment Program, inserted section 487F after section 487E.

appropriately qualified health professionals. Under such contracts, qualified health professionals agree to conduct clinical research for at least two years in consideration of the Federal government agreeing to repay, for each year of research service, not more than $35,000 of the principal and interest of the extant qualified educational loans of such health professionals. Payments equal to 39 percent of total loan repayments are issued to the Internal Revenue Service on behalf of program participants to offset Federal tax liabilities incurred. This program is known as the NIH Loan Repayment Program for Clinical Researchers (LRP–CR).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Loan Repayment Program for Clinical Researchers include the following:

1. Applicants must be U.S. citizens, U.S. nationals, or permanent residents of the United States;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their institutional base salary on the date of program eligibility (the effective date that a loan repayment contract has been executed by the Secretary of Health and Human Services or designee), expected to be between June 1 and August 1, 2003. Institutional base salary is the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care, or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization. Institutional base salary may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional association, or institution is considered to be non-profit if exempt from Federal tax under the provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified clinical research. Clinical research is defined as patient-oriented clinical research conducted with human subjects or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials;

6. Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

7. Full-time employees of Federal government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a non-profit source as defined in number 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulation, or HHS/NIH policy. Recipients who receive LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations);

9. Applicants will not be excluded from consideration under the Loan Repayment Program for Clinical Researchers on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the LRP–CR but did not receive an award are eligible to submit a new application if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the Loan Repayment Program for Clinical Researchers:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program for Clinical Researchers is obtained:

Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
Exceptional Financial Need (EFN) Scholarship Program,
Financial Assistance for Disadvantaged Health Professions Students (FADHPS),
Indian Health Service (IHS) Scholarship Program,
National Health Service Corps (NHSC) Scholarship Program,
National Institutes of Health Undergraduate Scholarship Program (UGSP),
Physicians Shortage Area Scholarship Program,
Primary Care Loan (PCL) Program,
Public Health Service (PHS) Scholarship Program, and
National Research Service Award (NRSA) Program—a recipient of postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) is eligible for loan repayment. NRSA recipients incur a service obligation of 12 months for their first year of NRSA support. This obligation is usually repaid in the second year of the NRSA award.

Note: NRSA service and loan repayment service obligations cannot be concurrently satisfied. There are two options for NRSA LRP recipients: (1) Defer receipt of LRP payments in the 2nd year of NRSA support to fulfill their obligation; or (2) request an extension of time to fulfill the NRSA service obligation in order to satisfy the LRP service obligation while also receiving loan repayment.

4. Full-time employees of Federal government agencies;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or

children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for the Loan Repayment Program for Clinical Researchers will be reviewed for eligibility and completeness by the NIH Office of Loan Repayment. Incomplete or ineligible applications will not be processed for review. Applications that are complete and eligible will be referred to the appropriate NIH Institute or Center for peer review by the NIH Center for Scientific Review (CSR). In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a clinical research career:

a. Potential of the applicant to pursue a career in clinical research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.
- Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

The following information is furnished by the applicant or others on behalf of the applicant (forms are completed electronically at the NIH LRP Web site, *www.lrp.nih.gov):*

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant Information Statement.
2. Biosketch.
3. Personal Statement, which includes a discussion of career goals and academic objectives.
4. Description of Research Activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.
5. Identification of three Recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. On-line Certification.
8. Current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form Number 2271 for T32 recipients).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the Research Activities Statement submitted by the applicant.
4. Description of the Research Environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or Mentoring Plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants (except for applicants with an NIH R01 or equivalent grant).
6. Biosketch of a laboratory staff member if involved in training or mentoring the applicant.

The other two Recommenders electronically transmit recommendations to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit the following to the NIH Office of Loan Repayment:

A certification that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her time, *i.e.*, not less than 20 hours per week; (c) certifies that the institution is non-profit (exempt from tax under 26 U.S.C. 501) or is a U.S. or other government agency (Federal, State, local); and (d) provides the applicant's institutional base salary.

Program Administration and Details

Under the Loan Repayment Program for Clinical Researchers, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses. Individuals must have total qualified educational debt that equals or exceeds 20 percent of their institutional base salary on the date of program eligibility. This is called the debt threshold. The formula used to calculate the potential annual loan repayment amount is total educational debt less the participant obligation (an amount equal to 10 percent of institutional base salary), which yields the total repayable debt; the total repayable debt is divided by 25 percent, which yields the potential annual repayment amount (up to $35,000). Participants are encouraged to pay the participant obligation during the contract period.

Following is an example of loan repayment calculations: an applicant has a loan debt of $100,000 and a university compensation of $40,000. Since the loan debt exceeds the debt threshold (20 percent of university compensation = $8,000), the applicant has sufficient debt for loan repayment consideration. The participant obligation is 10 percent of the institutional base salary, in this case $4,000. Thus, repayment of the $4,000 debt is the applicant's responsibility. The remaining amount, in this example $96,000 (total repayable debt) will be considered for repayment on a graduated basis. In this case, the maximum to be repaid in the initial two-year contract is $48,000 or $24,000 per year, plus tax reimbursement benefits.

The total repayable debt will be paid at the rate of one-quarter per year, subject to a statutory limit of $35,000 per year, for each year of obligated service. Individuals are required to initially engage in 2 years of qualified clinical research.

Following conclusion of the initial two-year contract, participants may competitively apply for renewal contracts if they continue to engage in qualified clinical research. These continuation contracts may be approved on a year-to-year basis, subject to a finding by NIH that the applicant's clinical research accomplishments are acceptable, qualified clinical research continues, and non-profit institutional or U.S. or other government agency (Federal, State, or local) support has been assured. Renewal applications are competitively reviewed and the submission of a renewal application does not assure the award of benefits. Funding of renewal contracts is also contingent upon an appropriation and/or allocation of funds from the U.S. Congress and/or the NIH or the NIH Institutes and Centers.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified clinical research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.,* not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract. Applicants must submit a signed contract, prepared by the NIH, agreeing to engage in qualified clinical research at the time they submit an application. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified U.S. or other government (Federal, State, local), academic institutions, and commercial or other chartered U.S. lending institution educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by academic institutions; and

(5) Private (''Alternative'') Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the Loan Repayment Program for Clinical Researchers:

(1) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(2) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(3) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(4) Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(5) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP),
- National Research Service Award (NRSA) Program;
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;

(6) Delinquent loans, loans in default, or loans not current in their payment schedule;

(7) PLUS Loans;

(8) Loans that have been paid in full; and

(9) Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded).

Before the commencement of loan repayment, or during lapses in loan repayments, due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of Leave Without Pay (LWOP) or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for Fiscal Year 2003 will commence after a loan repayment contract has been executed, which is expected to be no earlier than June 2003.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the Loan Repayment Program for Clinical Researchers expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Loan Repayment Program for Clinical Researchers is 93.280.

Dated: January 24, 2003.

Elias A. Zerhouni,

Director, NIH.

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BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Loan Repayment Program for Health Disparities Research

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) invite applications for the extramural Loan Repayment Program for Health Disparities Research (HDR–LRP or Program) for fiscal year 2003. Pursuant to the authority granted by section 103 of Pub. L. 106–525, the Minority Health and Health Disparities Research and Education Act of 2000, that added section 485G of the Public Health Service (PHS) Act (42 U.S.C. 287c–33), the Director of NCMHD, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals who agree to conduct research on minority health or other health disparities for a minimum of 2 years.

DATES: Information regarding the HDR–LRP is currently available and the following are the application deadline dates: Fiscal Year 2004—January 31, 2004; and Fiscal Year 2005—January 31, 2005. All applications must be submitted on-line by 5 p.m. (eastern standard time). If an Application Deadline Date falls on a weekend or holiday, the application is due on the following business day by 5 p.m. (eastern standard time).

ADDRESSES: Information about the program and an on-line application may be obtained at the NIH Loan Repayment Program Web site located at *http://www.lrp.nih.gov* or by contacting the National Center on Minority Health and Health Disparities, Attention Kenya McRae, non-toll free number: (301) 402–1366, or via e-mail at: *mcraek@od.nih.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

(1) ''Debt threshold'' is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20 percent of the applicant's annual institutional base salary at the time of award.

(2) ''Health disparities population'' as determined by the Director of NCMHD, after consultation with the Director of the Agency for Healthcare Research and Quality, is defined as a population where there is significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. For purposes of this announcement, the following populations are determined to be health disparities populations: Blacks/African Americans, Hispanics/Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians, Pacific Islanders and the medically underserved such as individuals from the Appalachian region.

(3) ''Health disparities research'' is defined as basic, clinical, or behavioral research on a health disparities population (including individual members and communities of such populations), including the causes of such health disparities and methods to prevent, diagnose, and treat such disparities.

(4) ''Institutional base salary'' is defined as the annual amount that the organization pays for the participant's appointment, whether the time is spent in research, teaching, patient care or other activities. Institutional base salary excludes any income that a participant may earn outside the duties of the organization, and it may not include or comprise any income (salary or wages) earned as a Federal employee.

(5) ''Medically underserved'' refers to individuals that lack access to primary and specialty care either because they are socioeconomically disadvantaged and may or may not live in areas with high poverty rates or because they reside in rural areas. The term also refers to individuals that reside in geographic areas where the Index of Medical Underservice (IMU) is 62 or less. The Health Resource Services Administration (HRSA) criteria designates a service area with an IMU of 62 or less as a ''medically underserved area (MUA).'' The IMU is a weighted score derived from four variables: the ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of population below the Federal poverty level, and percentage of the population age 65 years or over.

(6) ''Minority health conditions'' refers to all diseases, disorders, and other conditions (including mental health and substance abuse) that are unique to, more serious, or more prevalent in racial and ethnic minorities, for which the medical risk factors or types of medical interventions may be different or research involving such populations as subjects or data on such individuals is insufficient.

(7) ''Minority health disparities research'' is defined as basic, clinical, or behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions.

(8) ''Total educational loan debt'' is defined as the outstanding educational loan debt incurred by health professionals for their educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified U.S. Government, academic institutions, and commercial U.S. educational loans obtained by the applicant for: (a) Undergraduate, graduate and health professional school tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Director or his designee.

(9) ''Repayable debt'' means the difference between the applicant's total educational loan debt and 50 percent of the applicant's debt threshold.

Background

The Minority Health and Health Disparities Research and Education Act of 2000 (Pub. L. 106–525) was enacted on November 22, 2000, amending the Public Health Service (PHS) Act and adding section 485G that authorizes the Director of the National Center on Minority Health and Health Disparities (NCMHD) to establish a program entering into contracts with qualified health professionals. These health professionals are required to conduct minority health or other health disparities research for a minimum of two years, in consideration of the Federal Government repaying a portion of the extant principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. Payments equal to 39 percent of the total loan repayments are issued to the Internal Revenue Service on behalf of HDR–LRP participants to offset Federal tax liabilities incurred. In addition to establishing the program, the Director, NCMHD, must ensure that not fewer than 50 percent of the contracts are awarded to qualified health professionals that are members of health disparities populations. This program is known as the Loan Repayment Program for Health Disparities Research (HDR–

LRP). Selected applicants become participants of the HDR–LRP only upon the execution of a contract by the Director of NCMHD.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the HDR–LRP include the following:

(1) Applicants must be U.S. citizen, U.S. nationals, or permanent residents of the United States;

(2) Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

(3) Applicants must have total qualifying educational loan debt equal to or in excess of 20 percent of their annual institutional base salary at the time their loan repayment contract is executed by the Director, NCMHD (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000);

(4) Applicants must engage in qualified minority health or other health disparities research supported by a non-profit foundation, non-profit professional society, non-profit institution, or a U.S. or other government agency (Federal, State, or local). A foundation, professional society, or institution is considered to be non-profit if exempt from Federal tax under the provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501);

(5) Applicants must engage in qualified minority health or other health disparities research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week;

(6) Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients of LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations);

(7) Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees, who engage in qualifying research as part of their non-Federal duties, for the required percentage of time, are eligible to apply for loan repayment if they meet all other eligibility requirements;

(8) Applicants must have a research supervisor or mentor with experience in the area of proposed research;

(9) Applicants will not be excluded from consideration under the HDR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors; and

(10) No individual may submit more than one LRP application to the NIH in any fiscal year. Individuals who have applied previously for the Program or any other NIH Loan Repayment Program but did not receive an award are eligible to submit a new application if they meet the above eligibility criteria.

The following individuals are ineligible for participation in the HDR–LRP:

(1) Persons who are not United States citizens, nationals, or permanent residents;

(2) Individuals who have a Federal judgment lien against their property arising from a Federal debt are barred from receiving Federal funds until the judgment is paid in full or satisfied;

(3) Individuals who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of the HDR–LRP service obligation. The following are examples of programs with service obligations that disqualify applicants from consideration, unless a deferral for the length of participation in the HDR–LRP is obtained:

- Physicians Shortage Area Scholarship Program,
- Primary Care Loans (PCL) Program—recipients of PCLs incur a service obligation to practice primary care. PCL recipients are eligible to apply for the HDR–LRP if the PCL has been paid in full. If still repaying the PCL, LRP applicants must submit documentation, via facsimile to (866) 849–4046, from the Health Resources and Services Administration (HRSA) that demonstrates that the LRP applicant is satisfying the terms and conditions of the PCL,
- Public Health Service Scholarship Program,
- National Health Service Corps Scholarship Program,
- Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,
- Indian Health Service Scholarship Program,
- National Research Service Award Program—a current recipient of a postdoctoral National Research Service Award support from an individual postdoctoral fellowship (F32) or an institutional research training grant (T32) will not be eligible for loan repayment during the second year of NRSA support without a formal deferral of the NRSA service obligation (see *http://grants1.nih.gov/grants/guide /pa-files/PA–02–109.html*). Concurrent repayment of service obligations is prohibited. Participation in an NIH LRP is only permissible by first satisfying the NRSA service obligation, which is satisfied either by completing the second year of NRSA support or by requesting a deferral of the NRSA service obligation (note—first year NRSA recipients are eligible to apply for and receive NIH loan repayment. Second year NRSA recipients can apply to participate in the HDR–LRP, but can only receive loan repayment during the second year if an extension of time is obtained to satisfy the NRSA service obligation. If an extension is not obtained, loan repayment will commence after the completion of the NRSA service obligation. LRP payments are NOT retroactive.);
- Full-time employees of Federal Government agencies;
- Recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);
- Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations);
- Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans;
- Individuals with existing service obligations to Federal, State, or other entities may not apply for the HDR–LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation; and
- Individuals that have a Federal judgment lien against their property arising from a Federal debt may not apply for the HDR–LRP until the judgment has been paid in full or otherwise satisfied.

Application Procedures

Applications must be submitted electronically to the Office of Loan Repayment (OLR). The NIH LRP Web site is *http://www.lrp.nih.gov*. The site has an Applicant Information Bulletin with the current deadlines, sources for assistance, and additional details regarding application procedures.

Application materials from the applicant, the supervisor/mentor, recommenders and institutional officials must be submitted prior to the application deadline.

The following information must be provided by the applicant:

1. *Applicant Information Statement.*

2. *Biosketch.*

3. *Personal Statement,* which includes a discussion of career goals and academic objectives.

4. *Description of Research Activities,* which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur in the research project description provided by the applicant.

5. *Contact information for Three Recommenders* (one of whom is identified as research supervisor or mentor).

6. *Contact Information for Institution Official* able to serve as the Institutional Contact and verify an applicant's employment/research appointment and research funding status.

7. *On-line Certification.*

8. *Loan information,* which includes the current account statement(s), and promissory note(s) or disclosure statement(s), obtained from lending institution(s), submitted via facsimile to (866) 849–4046.

9. *Notice of Grant/Award* (or PHS Form Number 2271 for T32 recipients) if applying based on NIH support.

The following information must be provided by the Research Supervisor/Mentor and submitted electronically via the NIH–LRP Web site:

1. *Recommendation.*

2. *Biosketch.*

3. *Assessment of the Research Activities Statement* submitted by the applicant.

4. *Description of the Research Environment.* (Please provide detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.)

5. *Training or Mentoring Plan.* (Includes a detailed discussion of the training and/or mentoring plan, as well as the research methods and scientific techniques to be taught.)

6. *Biosketch of other pertinent staff members* involved in the training or mentoring the applicant.

Recommenders must submit their recommendations electronically.

Institutional Contacts must electronically submit a certification, via the NIH–LRP Web-site, that: (a) Assures the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program Contract is executed; (b) assures that the applicant is or will be engaged in qualifying research for 50 percent of their time, *i.e.*, not less than 20 hours per week; (c) certifies that the funding foundation, professional society, or institution is considered to be non-profit as provided under section 501 of the Internal Revenue Code (26 U.S.C. 501) or is a U.S. government entity (Federal, State, or local), and (d) provides the applicant's institutional base salary.

Review Process

Applications that are received and complete by the deadline will undergo peer review by a Special Emphasis Panel (SEP). The reviewers will use the review criteria in assessing and rating each application.

Review Criteria

a. Potential of the applicant to pursue a career in minority health or other health disparities research.

- Appropriateness of the applicant's previous training and experience to prepare him/her for a minority health or other health disparities research career.
- Suitability of the applicant's proposed minority health or other health disparities research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a minority health or other health disparities research career.

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

Program Administration and Details

Under the HDR–LRP, a portion of the participants' outstanding educational loan debt will be repaid. Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. For example, a participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 (the debt threshold is 20 percent of an applicant's annual institutional salary). All participants are responsible for paying one-half of their debt threshold amount. This amount is known as the participant's obligation and is subtracted from the total outstanding loan debt. In this case, the participant's obligation would be $4,000 and the participant's eligible loan debt would be reduced to $96,000. This reduced amount is known as the repayable debt ($100,000 − $4,000 = $96,000). Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments (one-fourth of the repayable debt amount), plus tax benefits.

Loan repayments will be made to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

In return for the repayment of their educational loans, participants must agree to (1) engage in qualified minority health or other health disparities research for a minimum period of two years; (2) engage in such research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week; (3) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (4) pay monetary damages as required for breach of contract; and (5) satisfy other terms and conditions of the LRP contract.

Repayments are made directly to lenders, following the receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Director determines that significant savings would result from a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services:

- Health Education Assistance Loan (HEAL);
- Health Professions Student Loan (HPSL);
- Loans for Disadvantaged Students (LDS); and
- Nursing Student Loan Program (NSL);

(2) Loans guaranteed by the U.S. Department of Education:

- Direct Subsidized Stafford Loan;
- Direct Unsubsidized Stafford Loan;
- Direct Consolidation Loan;
- Perkins Loan;
- FFEL Subsidized Stafford Loan;
- FFEL Unsubsidized Stafford Loan; and
- FFEL Consolidation Loan;

(3) Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans made by accredited academic institutions; and

(5) Private (''Alternative'') Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the HDR–LRP:

(i) Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

(ii) Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

(iii) Loans that have been consolidated with loans of other individuals, such as a spouse or child;

(iv) Loans or portions of loans obtained for educational or living expenses that exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

(v) Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Physicians Shortage Area Scholarship Program (Federal or State);
- National Research Service Award Program;
- Public Health and National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program;

(vi) Delinquent loans, loans in default, or loans not current in their payment schedule;

(vii) PLUS Loans;

(viii) Loans that have been paid in full;

(ix) Loans obtained after the execution of the LRP Contract (*e.g.*, promissory note signed after the LRP contract has been awarded); and

(x) Primary Care Loans.

During lapses in loan repayments, due either to NIH administrative complications or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the HDR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The Catalog of Federal Domestic Assistance number for the HDR–LRP is 93.307.

Dated: February 5, 2003.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 03–8427 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel G–09.

Date: April 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8423 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Mentored Scientist Development Award.

Date: April 21, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Roy L. White, PhD, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. 301–435–0287.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8420 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, N/A.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 13–14, 2003.

Closed: May 13, 2003, 8 a.m. to 8:15 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 13, 2003, 8:15 a.m. to 11:45 a.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 13, 2003, 11:45 a.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 13, 2003, 12:45 p.m. to 4:25 p.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 13, 2003, 4:25 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 14, 2003, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Open: May 14, 2003, 8:30 a.m. to 12:30 p.m.

Agenda: Committee discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Closed: May 14, 2003, 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 14, 2003, 1:30 p.m. to 2:30 p.m.

Agenda: Committee Discussion.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Open: May 14, 2003, 2:30 p.m. to 3 p.m.

Agenda: Personal qualifications and performance, and competence of individual investigators.

Place: Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute on Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8421 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Dose Escalation Trial Contract Proposal Teleconference.

Date: April 8, 2003.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone conference call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8422 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 21–22, 2003.

Closed: May 21, 2003, 9 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 22, 2003, 9 a.m. to 4 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *http//www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8424 Filed 4–7–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2002–13482]

Response Boat Replacement Project; Programmatic Environmental Assessment and Finding of No Significant Impact

AGENCY: Coast Guard, DHS

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the USCG Response Boat Replacement Project. The purpose of acquiring standard Response Boats—Small (RB-S) and Response Boats—Medium (RB-M) is to add to or replace these aging and increasingly inefficient vessels with standard, more reliable, and more environmentally sound ones. These boats will be deployed at the 44 Coast Guard Group or Activities units, 186 multi-mission stations, and 24 Marine Safety Offices that currently operate non-standard vessels and/or 41-foot Utility Boats (41-foot UTB).

ADDRESSES: Documents discussed in this notice, including comments, will be available for review or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC, between the hours 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. This material may also be viewed on the Internet at Web address: *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, or would like a copy of the PEA or FONSI, you may contact Mr. David Wiskochil at (202) 267–0584 or e-mail him at: *Dwiskochil@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: We are announcing the availability of the Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the Coast Guard Response Boat Replacement Project. The purpose of acquiring standard Response Boats—Small (RB-S) and Response Boats—Medium (RB-M) is to add to or replace these aging and increasingly inefficient vessels with standard, more reliable, and more environmentally sound ones. These boats will be deployed at the 44 Coast Guard Group or Activities units, 186 multi-mission stations, and 24 Marine Safety Offices that currently operate non-standard vessels and/or 41-foot Utility Boats (41-foot UTB).

Domestic port safety and security has long been a core USCG mission. In the wake of the terrorist attacks committed on September 11, 2001, however, emerging threats to the U.S. homeland have prompted an increased USCG focus on protecting domestic ports and the U.S. maritime transportation system from terrorist threats.

The PEA is a broad, general view of the environmental impacts that may be anticipated by the purchase and deployment of the RB-Ss and RB-Ms along the coastal United States, including the Great Lakes states, Hawaii, Alaska, Guam, Puerto Rico, and the U.S. Virgin Islands. The PEA cannot foresee all possible site-specific and cumulative environmental impacts as a result of implementation of the proposed action.

Homeporting identifies where a boat would normally be docked. Because this is a programmatic document without specific homeporting decisions for the RB–Ms and RB–Ss, certain site-specific environmental categories that may be impacted by those decisions have not been assessed in this document but will be addressed in follow-on analysis under the National Environmental Policy Act (NEPA) as necessary. As identified in the notice of intent and request for comments we published October 10, 2002 in the **Federal Register** (67 FR 63189–63191) these categories are: Socioeconomic, environmental justice, land use, cultural resources and geological resources.

We received six comments. Five of those who commented merely thanked us for a copy of the Notice. The sixth, California Coastal Commission, indicated that a Finding of Consistency might be necessary. The Coast Guard agrees that, when homeporting decisions are made, additional environmental analyses, as well as a consistency determination may be necessary. The USCG intends to replace the current 350 non-standard small boats with the new RB–Ss on a one-for-one basis at existing USCG facilities with minor or no changes to

infrastructure. Personnel levels are expected to remain the same.

The USCG also intends to replace the 41-foot UTBs with RB–Ms. In some cases, the RB–Ms will replace the 41-foot UTBs on a one-for-one basis. Some facilities may receive additional RB–Ms and supplementary personnel may be required. For Homeland Security considerations, the USCG may add additional RB–Ss and RB–Ms at existing USCG facilities. Actual homeporting of additional RB–Ms or RB–Ss will be addressed in follow-on NEPA documentation as necessary.

As part of the USCG's homeland security mission, some of the 700 RB–Ss will be used as part of the establishment and operation of Maritime Safety and Security Teams (MSSTs). Separate NEPA analyses are being conducted for the MSST program. The USCG is still formulating plans regarding the homeporting and personnel requirements of these boats. As homeporting decisions are made, the USCG will use this PEA as a tiering document, and if necessary, appropriate follow-on NEPA assessments will be completed.

Dated: April 2, 2003.

George Molessa,

Captain, U.S. Coast Guard, Assistant Commandant for Acquisition, Acting.

[FR Doc. 03–8524 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14500]

Merchant Mariner's Documents: Forms and Procedures for Renewals and Issuances

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard published a notice in the **Federal Register** on Thursday, February 20, 2003, in which we stated: ''The Coast Guard will begin issuing Merchant Mariner's Documents (MMDs) [on] a new form to new applicants as soon as possible.'' The Coast Guard has since implemented new, more secure procedures to process new or ''original'' applicants and is now issuing MMDs on the new form.

DATES: The Coast Guard began issuing MMDs to original applicants on the new form on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), (202) 493–1006.

SUPPLEMENTARY INFORMATION: MMDs both serve as identity cards for merchant mariners and provide information about the mariners' professional qualifications. MMDs, in the previously issued form (CG–2838 [Rev. 7–94]), serve the second of these purposes well enough; however, they no longer serve the first with sufficient confidence. The Coast Guard is replacing them using a new form (CG–2838 [Rev. 09/02]) that it will issue through a more secure process. It will make every effort to effect a smooth and easy transition from the old form to the new form. The issuance of MMDs on the new form for original applicants began on February 28, 2003.

Mariners may encounter delays incident to the new processes now in practice. For further information, mariners may contact their nearest Regional Exam Centers (RECs), a list of which appears at 46 CFR 12.01–7, or call Mr. Donald Kerlin at the National Maritime Center, 4200 Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, (202) 493–1006.

Authority: 46 U.S.C. 7301, 7302, 7303, 7304, 7305, 7503, 7505, and Department of Homeland Security Delegation No. 0170.

Dated: March 13, 2003.

Kevin J. Eldridge,

Rear Admiral, Coast Guard, Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 03–8451 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–15]

Notice of Proposed Information Collection: Comment Request; Application for Multifamily Housing Project

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for reviews, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 415 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the pubic and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Multifamily Housing Project.

OMB Control Number, if applicable: 2502–0029.

Description of the need for the information and proposed use: This information collection is the basic application used in HUD/FHA multifamily insurance programs. The related exhibits are needed by HUD to determine project feasibility, and mortgagor/contractor acceptability. HUD analyzes specific information including financial data, cost data, drawings, and specifications to determine whether the proposed project meets program requirements for mortgage insurance. This is a revision to include form HUD–92013–E, which accompanies each application for any project intended to

provide housing for the elderly or the disabled for non-assisted housing.

Agency form numbers, if applicable. HUD–92013, HUD–92013–SUPP, HUD–92013–NHICF, & HUD–92013–E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 168,680; the number of respondents is 6,350 generating approximately 6,350 annual responses, the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 36 minutes to 68 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 1, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–8549 Filed 4–7–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–31]

Announcement of Funding Awards for the Rural Housing and Economic Development Program; Fiscal Year 2002

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie Williams-Mitchell, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 7th Street, SW., Room 7137, Washington, DC 20410; telephone (202) 708–2290 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the SuperNOFA published March 26, 2002. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

The Rural Housing and Economic Development Program is designed to build capacity at the State and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, Indian tribes, and State housing finance agencies. The funds made available under this program were awarded competitively, through a selection process conducted by HUD in consultation with the United States Department of Agriculture (USDA).

For the Fiscal Year 2002 competition, a total of $25,000,000 was awarded to 101 projects nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in appendix A to this document.

Dated: March 27, 2003.

Roy A. Bernardi,

Assistant Secretary for Community, Planning and Development.

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM

Applicant	City	State	Award
Rural Alaska Community Action Program, Inc	Anchorage	AK	$400,000
Tanana Chiefs Conference, Inc	Fairbanks	AK	400,000
The Hale Empowerment and Revitalization Organization	Greensboro	AL	93,153
Ark of Love Ministries	Hayneville	AL	110,400
South Arkansas Community Development	Arkadelphia	AR	150,000
Southern Financial Partners	Arkadelphia	AR	150,000
Community Development Partnership	Eureka Springs	AR	149,954
Native Resources Developer, Inc	Pago Pago Samoa	AS	145,000
International Sonoran Desert Alliance	Ajo	AZ	150,000
Elfrida Citizens' Alliance, Inc	Elfrida	AZ	150,000
White Mountain Apache CDC	McNary	AZ	400,000
Comite de Bien Estar, Inc	San Luis	AZ	400,000
Catholic Community Services in Southeastern AZ	Sierra Vista	AZ	400,000
PPEP Microbusiness and Housing Development Cor	Tucson	AZ	400,000
White Mountain Apache Tribe of the Fort Apache Reservation	Yuma	AZ	400,000
Campesinos Unidos, Inc	Brawley	CA	150,000
Timbisha Shoshone Tribe	Brawley	CA	149,112
Housing Assistance Corporation	Fresno	CA	150,000
Community Advocacy Foundation	Fresno	CA	400,000
South County Housing Corporation	Gilroy	CA	400,000
North Fork Community Development Council, Inc	North Fork	CA	100,000

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM—Continued

Applicant	City	State	Award
Walking Shield American Indian Society, Inc	Tustin	CA	400,000
Guidiville Indian Rancheria	Ukiah	CA	150,000
San Pasqual Band of Mission Indians of California	Valley Center	CA	150,000
Colorado Housing Inc	Pagosa Springs	CO	148,750
Catholic Charities Housing, Inc	St Petersburg	FL	400,000
Georgia Legal Services Program, Inc	Atlanta	GA	150,000
Lower Chattahoochee Regional Development Center	Columbus	GA	150,000
Southwest Georgia United Empowerment Zone, Inc	Vienna	GA	399,996
Grow Iowa Foundation, Inc	Orient	IA	150,000
Federation of Appalachian Housing Enterprises, Inc	Berea	KY	150,000
Hazard Perry County Community Ministries, Inc	Hazard	KY	400,000
Kentucky Highlands Investment Corporation	London	KY	400,000
Purchase Area Housing Corporation	Mayfield	KY	150,000
Kentucky River Foothills Development Council, Inc	Richmond	KY	150,000
Southern Kentucky Economic Development Corp	Somerset	KY	400,000
Community Housing, Inc	Winchester	KY	134,000
Project 2000, Inc	Hammond	LA	75,000
Four Directions Development Corp	Bangor	ME	399,000
Western Maine Development Association	South Paris	ME	150,000
Keweenaw Bay Indian Community	Baraga	MI	145,015
Little River Band of Ottawa Indians	Manistee	MI	400,000
Midwest Minnesota Community Development Corporation	Detroit Lakes	MN	400,000
Three Rivers Community Action, Inc	Zumbrota	MN	150,000
North East Comm. Action Corp	Bowling Green	MO	50,000
Quitman County Development Organization	Marks	MS	400,000
Native American Development Corporation	Billings	MT	149,488
Blackfeet Tribe	Browning	MT	400,000
Ktunaxa Community Development Corporation	Elmo	MT	400,000
Fort Belknap Indian Community	Harlem	MT	333,218
Fort Peck Assiniboine and Sioux Tribes	Poplar	MT	400,000
Lake County Community Housing Organization	Ronan	MT	148,460
Community Developers of Beaufort-Hyde, Inc	Belhaven	NC	100,000
Northwestern Housing Enterprises, Inc	Boone	NC	400,000
Eastern Band of Cherokee Indians	Cherokee	NC	400,000
Native Opportunity Way Community Development Corp	Hollister	NC	99,560
Laurinburg Downtown Revitalization Corporation	Laurinburg	NC	150,000
Design Corps	Raleigh	NC	400,000
Omaha Tribe of Nebraska	Macy	NE	400,000
Santee Sioux Tribe of Nebraska	Niobrara	NE	400,000
Ho-Chunk Community Development Corporation	Winnebago	NE	384,500
New Mexico Mortgage Finance Authority	Albuquerque	NM	400,000
Women's Intercultural Center, Inc	Anthony	NM	150,000
Eastern Plains Housing Development Corporation	Clovis	NM	100,000
Rio Grande Valley Housing and Economic Development Corp	Espanola	NM	142,465
Las Cruces Affordable Housing, Inc	Las Cruces	NM	150,000
Dona Ana County Advocates for Children and Families	Las Cruces	NM	400,000
Hidalgo Medical Services	Lordsburg	NM	150,000
Pojoaque Housing Corporation	Santa Fe	NM	100,000
Fallon Paiute-Shoshone Tribe	Fallon	NV	400,000
Western Catskills Community Revitalization Council, Inc	Stamford	NY	150,000
Housing Authority of the Apache Tribe of Oklahoma	Anadarko	OK	27,075
Housing Authority of the Choctaw Nation of Oklahoma	Hugo	OK	100,000
Comanche Nation Housing Authority	Lawton	OK	306,000
Citizen Potawatomi Nation	Shawnee	OK	396,870
Cherokee Nation	Tahlequah	OK	400,000
Burns Paiute Tribe	Burns	OR	150,000
Confederated Tribes of the Umatilla Indian Reservation	Pendleton	OR	297,000
State of Oregon	Salem	OR	400,000
Four Bands Community Fund, Inc	Eagle Butte	SD	150,000
Lakota Fund	Kyle	SD	150,000
Sicangu Enterprise Center	Mission	SD	150,000
Oglala Sioux Tribe Partnership for Housing, Inc	Pine Ridge	SD	400,000
West Tennessee Legal Services, Inc	Jackson	TN	149,984
Eastern Eight Community Development Corporation	Johnson City	TN	16,000
Sparks Housing Development Corporation	El Paso	TX	150,000
El Paso Collaborative for Community & Economic Develop	El Paso	TX	400,000
Community Empowerment through Education (CETE)	El Paso	TX	400,000
Rural Development and Finance Corporation	San Antonio	TX	75,000
RDFC Housing Development Corporation	San Antonio	TX	75,000
Azteca Community Loan Fund	San Juan	TX	400,000
Center for Economic Opportunities	San Juan	TX	400,000

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR RURAL HOUSING AND ECONOMIC DEVELOPMENT PROGRAM—Continued

Applicant	City	State	Award
Proyecto Azteca	San Juan	TX	400,000
Texas Community Credit Opportunities, Inc	Weslaco	TX	400,000
World Vision	Federal Way	WA	150,000
Lopez Community Land Trust	Lopez	WA	150,000
Northwest Regional Facilitators	Spokane	WA	150,000
Sokoagon Chippewa Community	Crandon	WI	150,000
Catholic Charities Bureau, Inc	Superior	WI	100,000
Southern Appalachian Labor School	Kincaid	WV	400,000
Northern Arapaho Housing Development Organization	Ethete	WY	100,000
Total			$25,000,000

[FR Doc. 03–8552 Filed 4–7–03; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We (U.S. Fish and Wildlife Service) solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before May 8, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–068803

Applicant: Jerry Lynn Kinser, Conroe, Texas.

The applicant requests a permit to purchase, in interstate commerce, one female and one male captive bred Hawaiian (=nene) goose (*Branta* [=*Nesochen*] *sandvicensis*) for the purpose of enhancing its propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Permit No. TE–039800

Applicant: Kathy Williams, San Diego, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–068799

Applicant: Mikael Romich, San Bernardino, California.

The applicant requests a permit to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and nest monitoring in San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties, California for the purpose of enhancing its survival.

Permit No. TE–022630

Applicant: U.S. Geological Survey, Las Vegas, Nevada.

The permittee requests an amendment to collect/reduce to possession Astragalus jaegerianus (Lane Mountain milk-vetch) in conjunction with research in San Bernardino County, California for the purpose of enhancing its survival.

Permit No. TE–069171

Applicant: Santa Monica Mountains National Recreation Area, Thousand Oaks, California.

The applicant requests a permit to collect/reduce to possession Pentachaeta lyonii (Lyon's pentachaeta) in conjunction with seed collection and propagation in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE–839480

Applicant: Richard Zembal, Laguna Hills, California.

The permittee requests an amendment to take (harass by survey) the Stephen's kangaroo rat (Dipodomys stephensi) and the San Bernardino kangaroo rat (Dipodomys merriami parvus) in conjunction with surveys in San Bernardino, Riverside, and Orange Counties, California for the purpose of enhancing their survival.

Permit No. TE–799568

Applicant: Dana Kamada, San Clemente, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (Branchinecta conservatio), the longhorn fairy shrimp (Branchinecta longiantenna), the Riverside fairy shrimp (Streptocephalus wootoni), the San Diego fairy shrimp (Branchinecta sandiegonensis), and the vernal pool tadpole shrimp (Lepidurus packardi) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–821404

Applicant: Doug Willick, Orange, California.

The permittee requests an amendment to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and nest monitoring in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE–069321

Applicant: Department of the Army—Fort Hunter Liggett, Fort Hunter Liggett, California.

The applicant requests a permit to take (capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with mist-netting surveys in Ventura County, California for the purpose of enhancing their survival.

Permit No. TE–837309

Applicant: Michael Misenhelter, Norco, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (Euphydryas editha quino) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–069534

Applicant: Victor Novik, San Diego, California.

The applicant requests a permit to take (harass by survey) the Riverside fairy shrimp (*Streptocephalus wootoni*) and the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and to take (survey by pursuit) the Quino checkerspot butterfly (Euphydryas editha quino) in conjunction with surveys in San Diego, Imperial, Orange, Riverside, and Ventura Counties, California for the purpose of enhancing their survival.

Permit No. TE–067291

Applicant: Barry Roth, San Francisco, California.

The applicant requests a permit to take (survey, collect, and sacrifice) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with taxonomic and classification studies throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 28, 2003.

Daniel H. Diggs,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–8487 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permits for Incidental Take

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of 229 Permits for Incidental Take of Threatened and Endangered Species.

SUMMARY: Between April 21, 2000 and December 31, 2002, Region 2 of the Fish and Wildlife Service issued 229 permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. Of the 229 permits issued, in the greater Austin, Texas area; 9 were for the golden-cheeked warbler (*Dendroica chrysoparia*) (GCW) related to the Balcones Canyonlands Preserve, and 220 were for the Houston toad (Bufo houstonesis) (HT). In addition, between October 1, 2000, and September 30, 2001, 5 permits were amended, one for several karst invertebrate species, and 4 for HT.

ADDRESSES: If you would like copies of any of the above documents, please contact the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Room 4012, Albuquerque, New Mexico, 87103.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf, Regional Habitat Conservation Plan Coordinator, P.O. Box 1306, Room 4012, Albuquerque, New Mexico, 87103, 505–248–6651. Further details of these permits may also be viewed on the Internet at *http://ecos.fws.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal Regulation prohibit the ''take'' of wildlife species listed as threatened or endangered species. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize incidental take, *i.e.* that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

229 INCIDENTAL TAKE PERMITS ISSUED

Permittee	(State)Species	Permit No.	Date of issuance
Cornerstone #1	(TX)HT	TE–021793–0	4/27/00
Ehler	(TX)HT	TE–021561–0	4/27/00
Sanchez	(TX)HT	TE–021792–0	4/27/00
SPS Builders	(TX)HT	TE–021532–0	5/10/00
Cook Classic Home	(TX)HT	TE–023593–0	5/19/00
Walters	(TX)HT	TE–021659–0	5/24/00
Hanks and Sims	(TX)HT	TE–024872–0	6/9/00
Tilley	(TX)HT	TE–023965–0	6/9/00
Johnson	(TX)GCW	TE–024873–0	7/17/00
Comanche Canyon Ranch	(TX)GCW	TE–004683–0	7/17/00
Crossings, The	(TX)HT	TE–024619–0	7/27/00
Berger	(TX)HT	TE–027260–0	7/28/00
Cantrell	(TX)HT	TE–025654–0	7/28/00
Hodges	(TX)HT	TE–025653–0	7/28/00
Cooper	(TX)HT	TE–027163–0	7/28/00
Manferd	(TX)HT	TE–025655–0	7/28/00
Cornerstone #2	(TX)HT	TE–026687–0	7/28/00
Pettit	(TX)HT	TE–025656–0	7/28/00
Mixon	(TX)HT	TE–027746–0	8/17/00
Bush	(TX)HT	TE–029602–0	8/31/00
Macleod	(TX)HT	TE–025997–0–009	9/15/00
Ludwig/Wheeler	(TX)HT	TE–025997–0–001	9/15/00

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Miles	(TX)HT	TE–029947–0	9/18/00
Broussard	(TX)HT	TE–029946–0	9/18/00
Decker	(TX)HT	TE–028087–0	9/18/00
Rush Green Builder	(TX)HT	TE–025997–0–033	9/18/00
Russo	(TX)HT	TE–029605–0	9/18/00
Aiello	(TX)GCW	TE–025965–0–001	9/28/00
Lake of the Woods	(TX)HT	TE–029780–0	9/28/00
Bastrop Co 4 Low Quality	(TX)HT	TE–025965–0–000	9/28/00
Bastrop Co 42 Medium Quality	(TX)HT	TE–025997–0–000	9/28/00
Bastrop Seventh Day Adventist	(TX)HT	TE–025997–0–003	10/2/00
Becerra	(TX)HT	TE–025997–0–004	10/2/00
Kummermehr	(TX)HT	TE–025997–0–010	10/2/00
Seifert	(TX)HT	TE–025997–0–005	10/2/00
Jarrels	(TX)HT	TE–025997–0–006	10/13/00
SEB Circle B Homes	(TX)Karst	TE–025997–0–011	10/13/00
McClure #1	(TX)HT	TE–025997–0–014	10/13/00
McClure #2	(TX)HT	TE–025997–0–015	10/13/00
Schena	(TX)HT	TE–029608–0	10/27/00
MacQueen	(TX)HT	TE–025997–0–021	10/31/00
Pierson	(TX)HT	TE–025997–025	11/21/00
Ligopn	(TX)HT	TE–025997–0–014	11/21/00
Smith, L	(TX)HT	TE–025997–0–024	11/21/00
Lindenau	(TX)HT	TE–025997–0–023	11/21/00
Kelley	(TX)HT	TE–025997–0–008	12/1/00
Johnson #2	(TX)HT	TE–025997–0–027	12/21/00
Groves	(TX)HT	TE–025997–0–026	12/21/00
Niehus	(TX)HT	TE–025997–0–029	12/21/00
Walraven	(TX)HT	TE–033185	1/18/01
Gilfillan	(TX)HT	TE–33887–0	1/23/01
Gillespie	(TX)HT	TE–025997–0–032	1/29/01
Stahl	(TX)HT	TE–032117–0	1/29/01
Vavricek	(TX)HT	TE–025997–0–028	1/29/01
Holter	(TX)HT	TE–025997–0–030	1/29/01
Stobaugh #1	(TX)HT	TE–025965–0–002	2/20/01
Steines	(TX)HT	TE–025965–0–003	2/20/01
Miller	(TX)HT	TE–025997–0–033	2/20/01
Nira	(TX)HT	TE–025997–0–034	2/20/01
Sinclair	(TX)HT	TE–025997–0–031	2/20/01
Walters	(TX)HT	TE–025997–0–036	2/20/01
Parker	(TX)HT	TE–025997–0–037	2/20/01
Gardner	(TX)HT	TE–025997–0–035	2/20/01
Live Oak Homes	(TX)HT	TE–025997–0–016	2/26/01
McClure #3	(TX)HT	TE–025997–0–040	2/26/01
Cornerstone Construction #3	(TX)HT	TE–025997–0–042	2/26/01
Havens	(TX)HT	TE–025997–0–038	3/1/01
Young	(TX)HT	TE–025965–0–004	3/9/01
Sultan & Kahn	(TX)HT	TE–035525–0	3/9/01
Roush	(TX)HT	TE–025997–0–041	3/9/01
Macafee	(TX)HT	TE–025997–0–039	3/9/01
Advantage Builders #1	(TX)HT	TE–025997–0–045	3/23/01
Colter	(TX)HT	TE–025997–0–044	3/23/01
Bishop	(TX)HT	TE–025997–0–049	3/23/01
Miller	(TX)HT	TE–025965–0–047	3/23/01
McCluree #4	(TX)HT	TE–025965–0–048	3/23/01
Advantage Builder #2	(TX)HT	TE–025997–0–046	3/23/01
Mosley	(TX)HT	TE–025965–0–006	4/6/01
Slater	(TX)HT	TE–025965–0–007	4/6/01
Mendoza	(TX)HT	TE–025965–0–009	4/6/01
Smith, A	(TX)HT	TE–025965–0–008	4/6/01
Hansen	(TX)HT	TE–025965–0–010	4/6/01
Casey	(TX)HT	TE–025997–0–050	4/6/01
Wright	(TX)HT	TE–025997–0–043	4/25/01
CT–620	(TX)GCW..	TE–036095–0	4/30/01
Skye & Eckert	(TX)HT	TE–035908–0	4/30/01
Beeman	(TX)HT	TE–035919–0	4/30/01
DuCharme	(TX)HT	TE–025997–0–053	5/10/01
Shigo	(TX)HT	TE–025997–0–071	5/10/01
Juarez Construction, Inc	(TX)HT	TE–025965–0–016	5/10/01
Tod Phillips Homes #5	(TX)HT	TE–025965–0–014	5/10/01
Tod Phillips Homes #16	(TX)HT	TE–025965–1–015	5/10/01
Tod Phillips Homes #1	(TX)HT	TE–025997–0–059	5/10/01
Tod Phillips Homes #2	(TX)HT	TE–025997–0–060	5/10/01

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Tod Phillips Homes #3	(TX)HT	TE–025997–0–061	5/10/01
Tod Phillips Homes #64	(TX)HT	TE–025997–0–064	5/10/01
Haeffner & Rostetter	(TX)HT	TE–025997–0–063	5/10/01
Glenn	(TX)HT	TE–025997–1–055	5/10/01
Stobaugh #2	(TX)HT	TE–025997–0–011	5/10/01
Shen Inc.	(TX)HT	TE–025997–0–054	5/10/01
Goode	(TX)HT	TE–025997–0–062	5/10/01
West	(TX)HT	TE–025997–0–056	5/10/01
Hinkston	(TX)HT	TE–025997–0–057	5/10/01
Ingram #1	(TX)HT	TE–025965–0–018	6/15/01
Conrad	(TX)HT	TE–025997–0–073	6/15/01
Cornerstone Construction #4	(TX)HT	TE–025997–1–113	6/15/01
Alley	(TX)HT	TE–025965–0–017	6/15/01
Brigham	(TX)HT	TE–025997–0–0075	6/15/01
Martinez	(TX)HT	TE–025997–0–080	6/15/01
Brady	(TX)HT	TE–025997–0–075	6/15/01
Vasquez	(TX)HT	TE–037190–0	6/26/01
Harding	(TX)HT	TE–36096–0	6/28/01
Gray Mountain, Ltd	(TX)GCW	TE–037888–0	6/28/01
Bell	(TX)HT	TE–039440–0	6/28/01
Wirries	(TX)HT	TE–037191–0	7/1/01
JRS Builders #1	(TX)HT	TE–025997–0–093	7/5/01
JRS Builders #2	(TX)HT	TE–025997–0–094	7/5/01
City of Bastrop, Water Dept	(TX)HT	TE–025965–0–013	7/5/01
Kailing	(TX)HT	TE–025997–090	7/5/01
Ellington	(TX)HT	TE–025965–0–020	7/5/01
Wright	(TX)HT	TE–025965–0–019	7/5/01
McClure #5	(TX)HT	TE–025997–0–097	7/27/01
McClure #6	(TX)HT	TE–025997–0–098	7/27/01
Greenwood	(TX)HT	TE–025997–0–096	7/27/01
Howard	(TX)HT	TE–025997–0–058	7/27/01
Holberg	(TX)HT	TE–025997–1–100	8/1/01
Matl	(TX)HT	TE–025997–1–101	8/1/01
Bastrop County WCID #2	(TX)HT	TE–025965–1–023	8/1/01
Steiwig	(TX)HT	TE–025997–1–099	8/3/01
Capstone Builders #1	(TX)HT	TE–025965–1–021	8/3/01
Capstone Builders #2	(TX)HT	TE–025965–1–022	8/3/01
Cornerstone Construction #5	(TX)HT	TE–025997–0–104	8/23/01
Whited	(TX)HT	TE–025997–0–108	8/23/01
Fuller	(TX)HT	TE–025997–0–105	8/23/01
Myers	(TX)HT	TE–025997–0–109	8/27/01
Bowman Builders #1	(TX)HT	TE–025997–0–081	8/27/01
Bowman Builders #2	(TX)HT	TE–025997–0–082	8/27/01
Tyre	(TX)HT	TE–025997–1–106	8/27/01
Samaro	(TX)HT	TE–025997–1–107	8/27/01
Burnham	(TX)HT	TE–025997–1–111	9/10/01
Garcia	(TX)HT	TE–025997–1–113	9/10/01
Fernandez	(TX)HT	TE–025997–1–112	9/10/01
Taylor	(TX)HT	TE–025997–1–024	9/18/01
Serna	(TX)HT	TE–025997–1–114	9/18/01
Holcomb	(TX)HT	TE–041785–0	10/2/01
Nicholson	(TX)HT	TE–041784–0	10/10/01
Beathard	(TX)HT	TE–046419–0	10/10/01
Adams	(TX)HT	TE–041787–0	10/10/01
La Cantera	(TX)HT	TE–044512–0	10/22/01
Raz	(TX)HT	TE–042729–0	10/25/01
Scarpato	(TX)HT	TE–042733–0	10/26/01
Abell	(TX)HT	TE–025997–1–115	11/1/01
Briscoe	(TX)HT	TE–025997–1–120	11/1/01
Gonzales	(TX)HT	TE–025997–1–116	11/14/01
Attra	(TX)HT	TE–025965–1–029	11/14/01
Creamer	(TX)HT	TE–025965–1–027	11/14/01
Vogel	(TX)HT	TE–025997–1–123	11/14/01
King	(TX)HT	TE–025965–1–028	11/14/01
Juarez	(TX)HT	TE–025965–1–026	12/7/01
Beveridge	(TX)HT	TE–045264–0	12/13/01
Woodside Trails Wilderness	(TX)HT	TE–041786–0	12/13/01
Alley	(TX)HT	TE–025965–0–030	12/21/01
Erickson	(TX)HT	TE–025997–1–126	12/21/01
Whitfield	(TX)HT	TE–025997–1–125	12/21/01
McNulty	(TX)HT	TE–025965–1–031	12/21/01
Paradise Land & Cattle Co. #1	(TX)HT	TE–025965–1–032	12/21/01

229 INCIDENTAL TAKE PERMITS ISSUED—Continued

Permittee	(State)Species	Permit No.	Date of issuance
Paradise Land & Cattle Co #2	(TX)HT	TE–025997–1–127	12/21/01
McClure #7	(TX)HT	TE–025997–1–132	1/7/02
Scheuerman	(TX)HT	TE–025997–1–133	1/7/02
Sheuerman	(TX)HT	TE–025997–1–130	1/7/02
Ingram #2	(TX)HT	TE–025965–1–035	1/7/02
Arcy	(TX)HT	TE–025997–1–129	1/7/02
Akin	(TX)HT	TE–045263–0	1/9/02
Millenium Custom Homes #2	(TX)HT	TE–025997–0–139	1/30/02
Orta	(TX)HT	TE–025997–1–036	1/31/02
Alley #4	(TX)HT	TE–025965–0–037	1/31/02
Alley #3	(TX)HT	TE–025965–0–039	1/31/02
Morriss	(TH)HT	TE–025997–1–134	1/31/02
Hyatt	(TH)HT	TE–025997–1–138	1/31/01
Milliken	(TH)HT	TE–025997–1–137	1/31/01
Alley #5	(TH)HT	TE–025965–0–038	1/31/01
Johnson #3	(TH)HT	TE–025997–1–136	1/31/01
Gilpin	(TH)HT	TE–025997–1–135	1/31/01
Clayton	(TH)HT	TE–046417–0	2/14/02
Ribelin Ranch Partners, Ltd	(TH)HT	TE–40090–0	2/14/02
Jacobson	(TH)HT	TE–045267–0	2/14/02
Little	(TH)HT	TE–045265–0	2/14/02
Reams	(TH)HT	TE–042731–0	2/15/02
Jones	(TH)HT	TE–025997–1–140	2/19/02
Barnes	(TH)HT	TE–025965–1–041	2/21/02
Patton	(TH)HT	TE–025997–1–124	2/21/02
Nicholson	(TH)HT	TE–049665–0	2/26/02
Edwards	(TH)HT	TE–025997–1–141	3/4/02
Daggett	(TH)HT	TE–025997–1–145	3/21/02
Godwin	(TH)HT	TE–025965–1–043	3/21/02
Burgan	(TH)HT	TE–025997–1–144	3/21/02
Tapia	(TH)HT	TE–025997–1–146	3/21/02
Voicestream Wireless	(TH)HT	TE–025997–1–148	3/21/02
Odom	(TH)HT	TE–025997–1–147	3/21/02
JRS Builders #6	(TH)HT	TE–025997–1–152	3/21/02
JRS Builders #5	(TH)HT	TE–025997–1–151	3/21/02
JRS Builders #4	(TH)HT	TE–025997–1–150	3/21/02
Jenkins	(TH)HT	TE–025997–1–143	3/21/02
JRS Builders #3	(TH)HT	TE–025997–1–149	3/21/02
Smith, TM	(TH)HT	TE–025997–0–092	3/21/02
LCRA	(TH)HT	TE–046500–0	5/6/02
Williams	(TH)HT	TE–049666–0	6/5/02
Bartlett	(TH)HT	TE–049034–0	6/5/02
Paradise Lands & Cattle Co #3	(TH)HT	TE–025997–1–154	6/11/02
McClure #8	(TH)HT	TE–025997–1–132	6/25/02
Maldonado	(TH)HT	TE–025997–2–160	6/25/02
Parker	(TH)HT	TE–025997–1–159	6/25/02
Russel Park Estates	(TH)GCW	TE–051567–0	7/12/02
Nichols	(TH)HT	TE–025997–2–163	7/29/02
Travis	(TH)HT	TE–025997–1–158	7/31/02
Blairwood, Ltd./Silver Oa	(TH)GCW	TE–053021–0	8/5/02
King	(TH)HT	TE–025965–0–012	8/13/02
Dyer	(TH)HT	TE–025997–2–164	8/30/02
Yoch	(TH)HT	TE–025997–2–162	8/30/02
Parks	(TH)HT	TE–025997–2–165	9/30/02
Weinstein	(TH)HT	TE–025997–2–166	10/7/02
Angulo	(TH)HT	TE–049664–0	10/31/02
Vickers	(TH)HT	TE–025965–1–47	11/1/02
Goodwin	(TH)HT	TE–025965–2–048	12/3/02
May	(TH)HT	TE–025997–2–167	12/5/02
Laster/Pardue	(TH)HT	TE–053011–0	12/13/02
Bastrop County WCID #2	(TH)HT	TE–025965–049	12/13/02

5 AMENDMENTS

Permittee	(State) species	Permit No.	Date of issuance
Sultan and Kahn Partners, Lt.	(TX)HT	TE–023822–00	12/19/02
Bastrop County 4 Low Quality	(TX)HT	TE–025965–1–000	7/27/01
Bastrop County 42 Med Quality	(TX)HT	TE–025997–1–000	7/27/01
Gaines	(TX)HT	TE–023822–1–1	2/19/02
Laughlin	(TX)HT	TE–023822–001	2/19/02

Susan MacMullin,

Acting Regional Director, Region 2.

[FR Doc. 03–8488 Filed 4–7–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin. This Amendment extends the term of the compact for 45 days.

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 17, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–8561 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Tulapid Tribes of Washington and the State of Washington. This Amendment provides new regulations for electronic gaming devices.

EFFECTIVE DATE: April 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 13, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–8560 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 4, 8, 9, 16, 17, 21, 22, 23, and 24, in T. 8 S., R. 27 E., Boise Meridian, Idaho, was accepted November 15, 2002.

The plat representing the supplemental plat was prepared to correct certain erroneously lotted areas, as depicted on the plat, in T. 11 N., R. 17 E., Boise Meridian, Idaho was accepted January 15, 2003.

The plat representing the dependent resurvey and corrective dependent resurvey of portions of the north and east boundaries, and the dependent resurvey of a portion of the subdivisional lines, and the 1907 meanders of the right bank of the Salmon River in sections 1 and 12, and the subdivision of sections 1 and 12, in T. 23 N., R. 21 E., Boise Meridian, Idaho, was accepted January 16, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the west boundary and subdivisional lines, the subdivision of section 7, and a metes-and-bounds survey in section 7, in T. 7 S., R. 6 E., Boise Meridian, Idaho, was accepted January 24, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 26, and the metes-and-bounds survey of Parcel A and two easements in section 26, in T. 5 N., R. 1 E., Boise Meridian, Idaho, was accepted February 4, 2003.

The plats constituting the entire survey record of the dependent resurvey of a portion of the south, west, and north boundaries and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 6, 7, 17, 18, 19, 20, 29, 32, and 33, in T. 7 S., R. 27 E., Boise Meridian, Idaho, was accepted February 24, 2003.

The plat constituting the entire record of dependent resurvey of portions of the east boundary, and subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 12, 13 and 24, in T. 7 S., R. 26 E., Boise Meridian, Idaho, was accepted February 26, 2003.

The plat representing the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines, and the subdivision of section 25, in T. 2 N., R. 42 E., Boise Meridian, Idaho, was accepted March 12, 2003.

The plats representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 19, 31, and 32, the survey of a portion of the 1999–2002 meander lines of the Snake River in sections 19 and 32, the 1999–2002 survey of a partition line in section 32, and a metes-and-bounds survey in section 31, in T. 2 N., R. 43, E., Boise Meridian, Idaho, were accepted March 12, 2003.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary and subdivision of sections 19, 30, and 31, the corrective dependent resurvey of a portion of the subdivisional lines and subdivision of sections 19 and 31, and the further subdivision of section 30, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted January 29, 2003.

The plats representing the dependent resurvey of a portion of the subdivisional lines, 1892 meanders of the right bank of the Blackfoot River in section 18, the subdivision of sections 8, 9, 17, 18, and 19, and the survey of the 2000–2002 meanders and informative traverse of the Blackfoot River, the north boundary of the Fort Hall Indian Reservation, portions of the 2000–2002 median line of the Blackfoot River, all in sections 8, 9, 17, 18, and 19, partition lines in section 18, and a metes-and-bounds survey of fee land in section 9, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted February 10, 2003.

Dated: April 1, 2003.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–8489 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0088).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR Part 227, Delegation to States.''

DATES: Submit written comments on or before June 9, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 227, Delegation to States.

OMB Control Number: 1010–0088.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Prior to enactment of RSFA, section 205 of FOGRMA, 30 U.S.C. 1735, provided for the delegation of audits, inspections, and investigations to the States. RSFA amendments to section 205 of FOGRMA provided that other Federal royalty management functions may also be delegated to requesting States. RSFA authorized the following Federal royalty management functions to States:

a. Conducting audits and investigations;

b. Receiving and processing production and royalty reports;

c. Correcting erroneous report data;

d. Performing automated verification; and

e. Issuing demands, subpoenas (except for solid mineral and geothermal leases), orders to perform restructured accounting, and related tolling agreements and notices to lessees or their designees.

Currently, 10 States have delegation agreements to perform audits and investigations, which is the same function previously authorized under FOGRMA in 1982. Since the passage of RSFA and publication of the final rule on August 12, 1997, no States have proposed a delegation agreement to assume the four additional functions authorized by RSFA. When a State performs any of the delegated functions under the 30 CFR part 227 regulations, the State also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing the work of the delegated functions, is the focus of this information collection.

The requirement to respond is mandatory. If a State were to perform the function of processing royalty and production reports, that State would submit proprietary data to MMS, and both the State and MMS are required to safeguard and protect proprietary data. No items of a sensitive nature are collected.

Frequency of Response: Depending on the function being performed, information can be daily, monthly, quarterly, or annually.

Estimated Number and Description of Respondents: 10 States currently have delegation agreements to do audits and investigations. We estimated that one State per year may request to perform the four additional functions authorized by RSFA.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 4,179 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

STATE RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.103; 227.107; 227.109; 227.110(a), (b)(1) and (2), (c), (d), and (e); 227.111(a) and (b); 227.805.	If you want MMS to delegate royalty performed management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS may extend the 90-day period with your written consent. You may submit a new delegation proposal at any time following a the denial * * * and upon request, [MMS] will send a copy of the delegation proposals to trade associations to distribute to their members * * * You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management * * * You may submit a new renewal request any time after denial. After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS * * * If you do not request a hearing * * * any other affected person may submit a written request for a hearing to the MMS Associate Director for Minerals Revenue Management. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards. If you want perform to royalty management functions in addition to those authorized under your existing agreement you must request a new delegation * * * After yur delegation agreement is terminated, you may apply again for delegation by beginning with the propsosal process under this part.	200	3	600
227.112(d) and (e)	At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year; You must maintain adequate books and records to support your vouchers.	4	80	320
227.200(a), (b)(1), (2), (3), (4), and (5); (c), and (d).	* * * You must seek information or guidance from MMS regarding new, complex, or unique issues. Provide complete disclosure of financial results of activities; Maintain correct and accurate records of all mineral-related transactions and accounts; Maintain effective controls and accountability; Maintain effective system of accounts * * * Maintain adequate royalty and production information * * * Assist MMS in meeting the requirements of * * * GPRA; Maintain all records you obtain or create * * *.	200	10	2,000
227.200(e) and (h); 227.801(a); 227.804.	Provide months prior reports to MMS about your to activities under your delegated functions (progress reports) * * * you must provide periodic statistical reports to MMS summarizing the activities you carried out * * * Help MMS respond to requests for information from other Federal agencies, Congress, and the public * * * You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time * * * You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate * * *.	3	80	240
227.200(f); 227.401(e) 227.601 (d).	Assist MMS in maintaining adequate reference, royalty, and production databases; access well, lease, agreement, and reporter reference data from MMS, and provide updated information to MMS. * * * Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS * * *.	.5	250	125
227.200(g)	Develop annual work plans * * *	60	10	600
227.400(a) (4), (6) 227.401 (d).	If you request delegation of either production report or royalty report processing functions, you must perform * * * timely transmitting production report or royalty report data to MMS and other affected Federal agencies * * * Providing production data or royalty data to MMS and other affected Federal agencies * * * Timely transmit required production or royalty data to MMS and other affected Federal agencies * * *.	.5	250	125
7.400(c)	You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	20	1	20
227.501(c)	Submit accepted and corrected lines to MMS to allow processing in a timely manner * * *.	.5	250	125

STATE RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.601(c)	To perform automated verification or production reports or royalty reports, you must: Maintain all documentation and logging procedures * * *.	2	12	24
Total			946	4,179

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: The non-hour cost burden for one State to assume the four additional functions authorized by RSFA is estimated at $60,000 for electronic processing and imaging capability.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting non-hour cost burden to respondents or recordkeepers resulting from the collection of information. The non-hour cost burden for one State to assume the four additional functions authorized by RSFA is estimated at $60,000 for electronic processing and imaging capability. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 2, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–8533 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB control number 1010–0129.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Royalty-in-Kind Pilot Program '' Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas.''

DATES: Submit written comments on or before June 9, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Royalty-in-Kind Pilot Program—Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas.''

OMB Control Number: 1010–0129.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. MMS performs the royalty management functions for the Secretary.

Taking and selling of the Government's royalty share in the form of production or ''in kind'' (RIK) is authorized by the Mineral Leasing Act (MLA), 30 U.S.C. 192, for onshore leases and the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1353, for offshore leases. Recommendations in an MMS 1997 Feasibility Study concluded that, under the right conditions, RIK could be workable, revenue positive, and administratively more efficient for Government and industry. Pursuant to the 1997 study's recommendations, MMS is conducting the following pilots.

- For oil from Federal leases in Wyoming which began October 1, 1998;
- For gas from Federal leases offshore the State of Texas [Texas 8(g)] which began December 1, 1998;
- For gas from Federal offshore leases in the Gulf of Mexico (GOM) Region which began in October 1999. This will involve the largest production volumes; and
- For oil from Federal offshore leases in the GOM Region which began in October 2000.

In addition to the above pilots, on November 6, 2001, President Bush announced an initiative to refill the Strategic Petroleum Reserve (SPR). MMS, in coordination with the Department of Energy (DOE), entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the GOM will deliver royalty oil to MMS' exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for exchange or direct movement of exchange oil to the SPR.

The feasibility and cost-effectiveness of MMS providing RIK production direct to other Federal agencies for their consumption is also being investigated in conjunction with the pilots.

MMS, as the responsible steward of Federal mineral revenues, is conducting the pilot programs of oil and gas RIK sales and investigation of direct Federal consumption to show conclusively whether or not RIK is viable for the Federal Government, and, if so, how, when, and where it makes sense to exercise the RIK option.

Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas. The collections of information addressed in this ICR are necessary because the Secretary of the Interior is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale, and obtain a fair return on royalty production sold. MMS must fulfill those obligations for the Secretary. The reporting requirements are as follows:

a. The actual offers that potential purchasers will submit when MMS offers production for competitive sales;

b. Offerors' statements of financial qualification; and

c. Surety Instruments, such as a Letter of Credit (LOC), Bond, prepayment, or Parent Guaranty.

MMS has also re-evaluated the need for two reporting requirements that were approved by OMB in the last ICR submission and has decided that this information is no longer needed. These reporting requirements are (1) Form MMS–4440, Summary of Receipt and Delivery Volumes, and (2) Report of Gas Analysis. Also, the subject heading ''LOC'' has been changed to the more generic heading ''Surety Instruments'' to capture the broader field of financial instruments that may be collected under this ICR, such as Bonds, prepayments, and Parent Guarantees. That is, an LOC is just one of the many types of surety instruments used by MMS that provide a safeguard against non-payment by a respondent under an RIK contract.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is required to obtain or retain benefits.

For clarification purposes, we have also changed the title of this ICR from ''Bids and Financial Statements for Sale of Royalty Oil and Gas (RIK Pilots) (Form MMS–4440) to '''Royalty-in-Kind Pilot Program'Offers, Financial Statements and Surety Instruments for Sales of Royalty Oil and Gas.''

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 80 oil and gas companies.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 940 hours.

The following chart shows the breakdown of the estimated burden hours:

RESPONDENT ANNUAL BURDEN HOUR CHART

Royalty-in-kind pilot projects	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
	Offers	1	840	840
	Financial Statements	1	20	20
	Surety Instruments	4	20	80
		Total	880	940

(NOTE: A respondent is counted each time they respond. Unsuccessful offerors will submit only 2 responses.)

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of

the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 3, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–8534 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts: Extension of Expired Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that, in order to avoid interruption of visitor services, the National Park Service has extended the following concession contracts for a period of 3 years (*i.e.,* until December 31, 2005) or until such time as new authorizations are executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION All of the listed concession contracts expired by their terms on December 31, 2002. The National Park service has determined that the proposed extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete development of a Colorado River Management Plan, and issue a prospectus based on that plan leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
GRCA006	Arizona Raft Adventures, Inc	Grand Canyon National Park.
GRCA007	Arizona River Runners, Inc	Grand Canyon National Park.
GRCA010	Canyoneers, Inc	Grand Canyon National Park.
GRCA011	Colorado River & Trails Expeditions, Inc	Grand Canyon National Park.
GRCA015	Grand Canyon Expeditions Company Inc	Grand Canyon National Park.
GRCA016	Canyon Expeditions, Inc	Grand Canyon National Park.
GRCA017	Diamond River Adventures, Inc	Grand Canyon National Park.
GRCA018	Hatch River Expeditions, Inc	Grand Canyon National Park.
GRCA020	Moki Mac River Expeditions, Inc	Grand Canyon National Park.
GRCA021	OARS, Inc	Grand Canyon National Park.
GRCA022	Outdoor Unlimited River Trips	Grand Canyon National Park.
GRCA024	Aramark Leisure Services, Inc., dba Wilderness River Adventures.	Grand Canyon National Park.
GRCA025	Tour West, Inc	Grand Canyon National Park.
GRCA026	Western River Expeditions, Inc	Grand Canyon National Park.
GRCA028	Canyon Explorations, Inc	Grand Canyon National Park.
GRCA029	High Desert Adventures, Inc	Grand Canyon National Park.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Nick Hardigg, Chief, Concession Management, Grand Canyon National

Park, P.O. Box 129, Grand Canyon, AZ 86023, Telephone 928/638–7709.

Dated: March 3, 2003.

Cindy Orlando,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–8496 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Primary Restoration Plan, Santa Cruz Island, Channel Islands National Park, Santa Barbara County, CA; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Primary Restoration Plan for Santa Cruz Island at Channel Islands National Park. The formal no-action period was initiated October 18, 2002, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the National Park Service will begin to implement the Primary Restoration Plan described and analyzed as Alternative Four (Proposed Action) contained in the Final EIS. The selected plan features a deliberate, long-term (approximately six years) strategy which entails construction of fenced areas for managing pig eradication efforts, and coordinated use of prescribed burns and herbicide applications to control the highly invasive fennel (a non-native weed species).

This course of action and three alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in March 2001). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, and including numerous public meetings, approximately 50 written comments were received and duly considered. No substantive or adverse comments were received during the no-action period, which ended on November 17, 2002. Key consultations which aided in the preparation of the Draft and Final EIS involved (but were not limited to) the U.S. Fish and Wildlife Service, California Dept. of Fish and Game, State Historic Preservation Office, Native American Tribes, Santa Barbara Museum of Natural History, The Nature Conservancy, and the Santa Cruz Island Foundation.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Acting Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, California 93001; or via telephone request at (805) 658–5700.

Dated: February 10, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8501 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplemental Environmental Impact Statement; General Management Plan Amendment for Visitor Learning Center; Great Basin National Park, White Pine County, NV; Notice of Availability

Summary: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared and distributed a supplemental environmental impact statement (SEIS) for a proposed amendment of the General Management Plan (which was approved in 1993). The SEIS assesses the potential impacts of a proposal to construct a Visitor Learning Center in the townsite of Baker, Nevada (rather than on National Park Service park lands north of Baker, known locally as Baker Ridge). This conservation planning and environmental impact analysis effort identified and analyzed three alternatives (and foreseeable environmental consequences and appropriate mitigation strategies) for constructing the park's new Visitor Learning Center.

Proposal and Alternatives: The Final SEIS identifies and analyzes three alternatives, including ''no action'' (to document existing conditions and provide an environmental baseline for comparing ''action'' alternatives). The No Action Alternative (Alternative 1) assumes that the Baker Ridge location for the Visitor Learning Center would remain unchanged, thus implementing the existing General Management Plan (GMP). The Proposed Action (Alternative 2) amends the GMP to allow the construction to occur outside of the main park area within the townsite of Baker, Nevada. The approximately 7,000 ft² facilities identified are consistent with the concepts approved in the GMP. The Third Alternative (Alternative 3) amends the GMP to eliminate the Baker Ridge Visitor Learning Center and to maintain the current Lehman Caves Visitor Center as the only orientation facility.

Public Involvement: Notice of initiation of the conservation planning and environmental impact analysis process was published in the **Federal Register** on December 2, 1999; and information regarding the proposal was mailed to the park's GMP mailing list, and press release was distributed to local and regional media. A notice of availability of the Draft SEIS was published in the **Federal Register** on April 19, 2002; and on April 21, 2002 local announcements were published in the Ely Times. Copies of the document were distributed by direct mailings, posting in public libraries, and through electronic media. Copies were provided to Federal, state, and local agencies, interested organizations, and private individuals. Several scoping and consultation meetings were conducted throughout; fewer than a dozen written comments were received from these combined phases. Several letters of support were received. All substantive comments on the Draft SEIS, and specific responses, are included in the Final SEIS. Besides editorial revisions, changes from the Draft SEIS made in the Final SEIS were derived from clarifications prompted by comments received as a result of the 60 day comment period, as follows:

The U.S. Environmental Protection Agency raised two concerns. First centered upon ''Greening the Government'' opportunities (Executive Order 13101 ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition''; Executive Order 13123 ''Greening the Government Through Efficient Energy Management''; and, Executive Order 13148 ''Greening the Government Through Leadership in Environmental Management''). Details on the park's compliance with these Federal ''greening the government'' policies are included in section 3.0 (p. 29) of the Final SEIS. The second concern was in regards to exclusion of water quality (including permitting under section 402 and 404 of the Clean Water Act) as a impact issue topic.

Further information to address this concern has been included in section 1.8 (pp. 18–19) of the Final SEIS.

The Nevada Health Division requested further information on the potential for the construction of new water and sewage treat facilities. Clarifications and new information regarding this element of the proposed action has been included in section 3.0 (pp. 29 and 35) of the Final SEIS.

Printed or CD–ROM copies of the Final SEIS may be obtained upon request to the Park Superintendent, Great Basin National Park, Baker, Nevada, 89311. The telephone number for the park is (775) 234–7331. In addition the document may be obtained via the Internet at *http://www.nps.gov/grba.*

If individuals responding to release of the Final SEIS request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and businesses; and, anonymous comments may not be considered.

Decision Process: The Proposed Alternative would amend the General Management Plan to allow the placement of a Visitor Learning Center outside of the main park area, on an administrative site located within the Baker townsite. A Record of Decision may be executed no sooner than 30 (thirty) days after publication of EPA's notice of filing of this Final SEIS in the **Federal Register**. As a delegated EIS, the official with responsibility for approving the Final SEIS is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Great Basin National Park.

Dated: February 3, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8495 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Lake Management Plan, Lake Mead National Recreation Area, Nevada and Arizona; Notice of Approval of Record of Decision

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the Lake Management Plan for Lake Mead National Recreation Area, in southeast Nevada and southwest Arizona. The requisite 30 days no-action period was officially initiated January 17, 2003, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the NPS will begin to implement the Lake Management Plan described and analyzed as Alternative C (the Preferred Alternative) contained in the Final EIS. The selected plan features a deliberate, long-term strategy to protect significant cultural and natural resources, while allowing for a spectrum of recreational use. Boating carrying capacity is established at 5055 boats, waters are zoned for a variety of recreational settings including a shoreline flat wake zone to improve shoreline safety, and new sanitation and public education measures will be initiated. Carbureted two-stroke engines will be prohibited beginning December 31, 2012, and personal watercraft use is authorized in specified zones (the final rulemaking to authorize personal watercraft use is scheduled to be published immediately, while separate rulemaking will be pursued to implement other components of the selected plan). This plan was deemed to be the ''environmentally preferred'' alternative, and it was further determined that no impairment of park values would ensue based on its implementation.

This course of action and three alternative plans were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in April 2002). The full spectrum of foreseeable environmental consequences were assessed, and appropriate measures to minimize harm were identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were conducted, and media (local and regional) and Web site updates were regularly produced. All written comments responding to the Draft and Final EIS were duly considered, and are maintained in the administrative record of the overall conservation planning and environmental impact analysis process. Key collaborations which aided in the preparation of the Draft and Final EIS involved (but were not limited to) numerous county and city agencies and boards in Arizona and Nevada, the U.S. Fish and Wildlife Service, Arizona Game and Fish Dept., Nevada Div. of Wildlife, all interested native American Tribes, affected Colorado River law enforcement agencies, Nevada and Arizona State Historic Preservation Offices, and the U.S. Geological Survey.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005; or via telephone request at (702) 293–8986.

Dated: March 18, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–8547 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement (GMP/EIS), Saguaro National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a general management plan, Saguaro National Park, Arizona.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement (EIS) for a general management plan for Saguaro National Park. The environmental impact statement will be approved by the Director, Intermountain Region.

The general management plan (GMP) will establish the overall direction for the park, setting broad management goals for managing the area over the next 15 to 20 years. The plan will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park. Based on the desired

conditions, the plan will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park. Among the topics that will be addressed are protection of natural and cultural resources, protection of riparian resources, appropriate range of visitor uses, impacts of visitor uses, adequacy of park infrastructure, visitor access to the park, education and interpretive efforts, wilderness suitability, park partnerships, and external pressures on the park. In cooperation with local, State, tribal, and other Federal agencies, attention will also be given to cooperative efforts to address issues that affect the integrity of Saguaro National Park, such as the management of the urban/park interface, traffic congestion in and around the park, fires, threatened and endangered species and their habitat, and biological corridors that lead into and out of the park.

A range of reasonable alternatives for managing the park, including a no-action and preferred alternative, will be developed through the planning process and included in the EIS. The EIS will evaluate the potential environmental impacts of the alternatives.

As the first phase of the planning and EIS process, the National Park Service is beginning to scope the issues to be addressed in the GMP/EIS. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions regarding the issues or concerns the GMP/EIS should address, including the suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts.

DATES: Written comments on the scope of the general management plan/environmental impact statement will be accepted for 60 days beyond the publication of this notice of intent. In addition, public scoping sessions will be held in Tucson and surrounding communities in the winter of 2003. Locations, dates, and times of these meetings will be provided in local and regional newspapers, and on the Internet at *http://www.nps.gov/sagu.*

ADDRESSES: Written comments or requests to be added to the project mailing list should be directed to: Sarah Craighead, Superintendent, Saguaro National Park, 3693 S. Old Spanish Trail, Tucson, AZ 85730 telephone (520) 733–5101; e-mail: *sagu_information@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Sarah Craighead, Superintendent, Saguaro National Park, 3693 S. Old Spanish Trail, Tucson, AZ 85730 telephone (520) 733–5101. General information about Saguaro National Park is available on the Internet at *http://www.nps.gov/sagu* and *http://friendsofsaguaro.org.*

SUPPLEMENTARY INFORMATION: Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Be sure to include your name and return street address in your Internet message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that their home addresses be withheld from the public record, which will be honored to the extent allowable by law. Requests to withhold names and/or addresses must be stated prominently at the beginning of the comments. However, submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: February 3, 2003.

Karen P. Wade,

Director, Intermountain Region.

[FR Doc. 03–8502 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Draft Environmental Impact Statement for Schuylkill River Valley National Heritage, Management Plan Update

AGENCY: National Park Service, Department of Interior.

ACTION: Availability of draft environmental impact statement for the Schuylkill River Valley National Heritage Area Management Plan Update.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Draft Environmental Impact Statement (DEIS) for Schuylkill River Valley National Heritage Area Management Plan Update. The Schuylkill River Valley National Heritage Area Act of 2000 requires the Schuylkill River Greenway Association, with guidance from the National Park Service, to prepare an update of their 1995 Schuylkill Heritage Corridor Management Action Plan. The Management Plan Update is expected to include: (A) Actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area; (B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historical, recreational, or scenic significance; (C) a recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability; (D) a program for implementation of the management plan by the management entity; (E) an analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this title; and (F) an interpretation plan for the Heritage Area.

The study area, designated as the Schuylkill River Valley National Heritage, includes parts of the counties of: Schuylkill, Berks, Chester, Montgomery and Philadelphia in southeastern Pennsylvania as associated with the Schuylkill River corridor.

The National Park Service (NPS) maintains two park sites within the region: Valley Forge National Historical Park and the Hopewell Furnace National Historic Site. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Schuylkill River Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

DATES: The DEIS will remain on Public Review for sixty days from the publication of the notice in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representative or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 13, 2002.

Pat Phelan,

Associate Regional Director, Administration, Northeast Region.

[FR Doc. 03–8492 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ala Kahakai National Historic Trail Comprehensive Management Plan, County of Hawaii, HI; Notice of Intent To Prepare an Environmental Impact Statement

Summary: Pursuant to provisions in § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the National Park Service is initiating conservation planning and environmental impact analysis for a Comprehensive Management Plan (CMP) for the recently designated Ala Kahakai National Historic Trail. This effort will provide an Environmental Impact Statement (EIS) and CMP that encompasses protection of sacred, cultural and natural resources, visitor use and interpretation, and facilities. This National Historic Trail traces approximately 175 miles of the prehistoric coastal Ala Loa (''long trail'') on the island of Hawaii, from Upolu Point on the northern tip of the island, south along the entire west coast, around Ka Lae (South Point), and then up to the eastern boundary of Hawaii Volcanoes National Park. The original trail linked many pre-contact communities on the island, as well as locations of many significant events in Hawaiian history.

The Ala Kahakai Trail was designated a National Historic Trail by the United States Congress on January 24, 2000. This designation was derived from a trail feasibility study entitled Ala Kahakai National Trail Study (and Final Environmental Impact Statement, January 1998), as well as on testimony offered by community advocacy groups for the trail. On November 13, 2000, the 106th U.S. Congress and President William Clinton officially incorporated the trail into the National Trails System. Pub. L. 106–509 calls for establishment of a continuous trail, which is to be administered by the Secretary of the Interior.

Alternatives: As basis for preparing the Ala Kahakai NHT CMP/EIS, the NPS jointly with the State of Hawaii, Native Hawaiian groups, private landowners and other stakeholders will identify and analyze several alternative management concepts, consistent with agency policy. At this time, in addition to establishing an environmental baseline by developing a ''No Action'' alternative (maintaining existing conditions and management), the conservation planning process is expected to identify several alternative options for providing visitor use opportunities and suitable protection strategies. The CMP/EIS will evaluate the potential environmental impacts of each alternative, and identify appropriate mitigation actions. The alternatives will be based upon input from the community, an environmental constraints analysis using updated Geographical Information Systems (GIS) data, and other analytical and decision-making methods.

Impact Analysis Issues: The CMP/EIS will be tiered to the 1998 Ala Kahakai National Trail Study and EIS. All issues and concerns which informed completion of that project will be updated through consultations and discussions with current landowners, agencies, Native Hawaiian groups, local business owners, and other stakeholders. A planning newsletter is available detailing issues identified to date (copies may be obtained as noted below). At this time, topics to be addressed include:

(1) Protection of sacred and cultural Native Hawaiian sites from intended and unintended damage by trail users;

(2) Management of marine and terrestrial natural resources that are or may be affected by increased public use of the Ala Kahakai;

(3) Landowner liability with regard to access across privately-owned property, as well as trespassing, littering, and other property offenses (approximately 50% of the trail corridor, much of which may be owned in fee simple by the State of Hawaii, traverses private lands);

(4) Trail maintenance and monitoring by volunteer community-based groups;

(5) Facility development and maintenance; and

(6) Safety and security of trail users.

Scoping/Public Involvement: There will be public open house meetings held throughout the various stages of the overall conservation planning process. These meetings will be hosted in communities across the various regions along the designated trail route. The first public meetings will be to elicit comments that identify new concerns and issues, provide essential environmental information, and suggest trail design alternatives. These initial meetings will take place beginning on March 22, 2003. A final summary of all information developed in the scoping phase will be available. Subsequently, draft management alternatives will be developed and available for review through a second round of public meetings. Finally, public meetings to foster broad review of the Draft CMP/EIS will be hosted. All meetings will be noticed and publicized through the local news media, direct mailings, and on the trail's Web site.

Comments: All responses conveying new information or concerns are encouraged at this time, and may be submitted by any one of several methods. Mail comments to Mr. Mike Donoho, Planning Team Leader, 73–4786 Kanalani Street, #14, Kailua-Kona, HI 96740; or transmit via email c/o *mike_donoho@nps.gov* (include your name and return address in your email message); or via facsimile to (808) 329–2597. All written scoping comments must be postmarked or transmitted not later than 30 days from the date that this notice is published in the **Federal Register**—as soon as this date has been determined it will be widely publicized, including posting on the trail's Web site to be established in spring 2003.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspections all submissions from organizations or businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the Draft CMP/EIS for review and comment will be officially announced by notice of availability in the **Federal Register**, as well as through local and regional news media, area libraries, and direct mailing. At this time, distribution of the document is anticipated during fall 2004. After due consideration of all comments and information received, a Final CMP/EIS would be prepared which at this time is anticipated could be completed during summer 2005. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Ala Kahakai National Historic Park.

Dated: February 13, 2003.

Arthur E. Eck,

Deputy Regional Director, Pacific West Region.

[FR Doc. 03–8494 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the Lackawanna Valley National Heritage Area, Management Plan Update

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Lackawanna Valley National Heritage Area Management Plan Update.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) for the Management Plan Update for Lackawanna Valley National Heritage Area. The Lackawanna Valley National Heritage Area Act of 2000 requires the Lackawanna Heritage Valley Authority (LHVA), with guidance from the National Park Service, to prepare an update of their 1991 Plan for the Lackawanna Heritage Valley. The Management Plan Update is expected to include: (A) An inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the purposes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its historical, cultural, natural, recreational, or scenic significance. (B) A recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, natural, and recreational resources of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability. (C) A program for implementation of the management plan by the management entity, including (i) plans for restoration and construction; and (ii) specific commitments of the partners for the first 5 years of operation. (D) An analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act. (E) An interpretation plan for the Heritage Area.

The study area, designated as the Lackawanna Valley National Heritage Area, shall be comprised of all or parts of Lackawanna County, Luzerne County, Wayne County, and Susquehanna County, Pennsylvania in northeastern Pennsylvania as associated with the Lackawanna Valley River corridor.

The National Park Service (NPS) maintains one park site within the region: Steamtown National Historical Park. Otherwise the majority of land is non-Federal and the NPS assumes a management role only within the park unit. Instead, conservation, interpretation and other activities are managed by partnerships among Federal, State, and local governments and private nonprofit organizations. The Lackawanna Heritage Valley Authority (LHVA) manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

The EIS will address a range of alternatives—they include a no-action alternative and other action alternatives. The impacts of the alternatives will be assessed through the EIS process.

A scoping meeting will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspapers.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Service, U.S. Customs House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov,* 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name/address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: January 28, 2003.

Pat Phelan,

Associate Regional Director, Administration, Northeast Region.

[FR Doc. 03–8493 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee.

General Information: The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters

within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items.

The Review Committee's work is completed during meetings that are open to the public. The next scheduled meetings are in St. Paul, MN, May 9-11, 2003, and Albuquerque, NM, November 21-23, 2003. Final dates for the Albuquerque meeting will be confirmed during the St. Paul meeting.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to nagpra__info@nps.gov.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Website, *http://www.cr.nps.gov/nagpra*; for the Review Committee's meeting protocol, click ''Review Committee,'' then click ''Procedures.''

Indian tribes and Native Hawaiian organizations that are considering visits to museums or Federal agencies in Review Committee meeting locations for the purpose of transfers of repatriated cultural items may wish to schedule transfers to coincide with Review Committee meetings. The National NAGPRA program awards repatriation grants to assist with the costs of repatriation transfers. Information about NAGPRA grants is posted on the National NAGPRA Website at *http://www.cr.nps.gov/nagpra*; click ''NAGPRA Grants.''

St. Paul, MN, meeting, May 9-11, 2003: At the invitation of the Minnesota Indian Affairs Council, the Review Committee will meet on May 9, 10, and 11, 2003, in the Town Square A Room in the Radisson City Center Hotel St. Paul, 411 Minnesota Street, St. Paul, MN 55101, telephone (651) 291-8800, Web *http://www.radisson.com/stpaulmn__citycenter*.

Meeting sessions will begin at approximately 8:30 a.m. each day, and will end at approximately 5 p.m. on May 9 and 10, and approximately 12 noon on May 11. The agenda for the meeting in St. Paul will include National NAGPRA program reports on implementation; consideration of a dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum; discussion of regulations, dispute resolution procedures, and the Review Committee's 2002 report to the Congress; and presentations and statements by Indian tribes and Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the St. Paul meeting, submit a written request with an abstract of the presentation and contact information. Persons also may submit written statements for consideration by the Review Committee during the St. Paul meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee (1) by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or (2) by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 372-5197.

No special lodging arrangements have been made for this meeting. A variety of accommodations are available in St. Paul and nearby communities.

Albuquerque, NM, meeting, November 2003: The Review Committee is scheduled to meet in Albuquerque, NM, November 21-23, 2003. Final dates for the Albuquerque meeting will be confirmed during the St. Paul meeting. A subsequent Federal Register notice will be published that includes final meeting dates, location, agenda, and other details for the Albuquerque meeting.

Dated: March 3, 2003.

John Robbins,

Designated Federal Officer, NAGPRA Review Committee.

[FR Doc. 03–8506 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed National Natural Landmark Designation for Garden Canyon at Fort Huachuca, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed National Natural Landmark designation.

SUMMARY: The National Park Service has evaluated and determined that Garden Canyon, located within Fort Huachuca, Cochise County, Arizona, meets the criteria for national significance and proposes to designate it a National Natural Landmark. The public is invited to comment on this proposed action.

DATES: Written comments will be accepted until June 9, 2003.

ADDRESSES: Written comments should be sent to Margi Brooks, National Natural Landmarks Program Coordinator, National Park Service, 1415 N. Sixth Ave., Tucson, Arizona, 85705, or to her Internet address: *Margi_Brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Margi Brooks at 520–670–6501 extension 232.

SUPPLEMENTARY INFORMATION: Garden Canyon represents the best example of Madrean montane evergreen woodland, Madrean montane conifer forest, and semi-desert grassland in the Mohave-Sonoran desert region. This unique assemblage of biotic communities harbors many subtropical species at the northern edges of their range. The relative absence of livestock grazing, coupled with a relatively natural fire regime, has contributed to the retention of ecosystems in Garden Canyon that are representative of pre-settlement conditions. Information on the National Natural Landmarks Program can be found in 36 CFR Part 62 or on the Internet at *http://www1.nature.nps.gov/nnl/index.htm.*

Dated: February 27, 2003.

Margaret A. Brooks,

National Natural Landmarks Program Manager.

[FR Doc. 03–8503 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Museum of Western Colorado, Grand Junction, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the Museum of Western Colorado, Grand Junction, CO, that meets the definition of ''sacred object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has

control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is an Apache Gahe (Crown Dancer's) mask. This mask is made of painted wood, hide (buckskin), feathers, cloth, and metal.

The mask was purchased by Paul Pletka in New Mexico. No other information regarding the date or circumstances of its acquisition is known. Mr. Pletka donated the mask to the Museum of Western Colorado in 1975.

Through consultations with members of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, the mask has been identified as a specific ceremonial object needed by the Mescalero Apache Tribe's traditional Native American religious leaders for the practice of traditional religion. Independent research conducted by the museum's professional staff, including discussions with the donor, support this assessment.

Officials of the Museum of Western Colorado have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Museum of Western Colorado also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between the mask and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object should contact Judy Prosser-Armstrong, Curator of Archives, Librarian and Registrar, Museum of Western Colorado, P.O. Box 20000, Grand Junction, CO 81502-5020, telephone (970) 242-0971, extension 210, before May 8, 2003. Repatriation of this sacred object to the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Museum of Western Colorado is responsible for notifying the Apache Tribe of the Fort Cobb Reservation, Fort Cobb, Oklahoma, a nonfederally recognized Indian group; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona that this notice has been published.

Dated: February 7, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8504 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains in the possession of the Nevada State Museum, Carson City, NV. These human remains were removed from an unidentified site in the vicinity of Pyramid Lake, Washoe County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum professional staff in consultation with a representative of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

In 1971, human remains representing a minimum of one individual were removed by an unknown person from site 26Wa1019 in the vicinity of Pyramid Lake, Washoe County, NV. The human remains were donated anonymously to the Nevada State Museum in 1971. The human remains are of a female between 25 and 35 years of age. No known individual was identified. No associated funerary objects are present.

These human remains were examined by Douglas Owsley of the Smithsonian Institution. Dr. Owsley indicates that the cranial morphology of this individual is consistent with known Paiute individuals. Ancestors of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada, have traditionally occupied the area around where these human remains were recovered.

Officials of the Nevada State Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Nevada State Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Alanah Woody, NAGPRA Coordinator, Nevada State Museum, 600 North Carson Street, Carson City, NV, 89701, telephone (775) 687-4810, extension 229, before May 8, 2003. Repatriation of the human remains to the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada, may proceed after that date if no additional claimants come forward.

The Nevada State Museum is responsible for notifying the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada that this notice has been published.

Dated: January 28, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8505 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–434 and 731–TA–1030–1032 (Preliminary)]

4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents From China, Germany, and India

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary

phase countervailing duty investigation No. 701–TA–434 (Preliminary) and antidumping investigations Nos. 731–TA–1030–1032 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of 4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents, provided for in subheadings 2921.59.20 and 3204.20.80, respectively, of the Harmonized Tariff Schedule of the United States that are allegedly subsidized by the Government of India and by reason of such imports from China, Germany, and India that are allegedly sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by May 15, 2003. The Commission's views are due at Commerce within five business days thereafter, or by May 22, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on March 31, 2003, by Ciba Specialty Chemicals Corporation, Tarrytown, NY.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than April 16, 2003, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 2, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8514 Filed 4–7–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: April 17, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes
3. Ratification List

4. Inv. Nos. 701–TA–433 and 731–TA–1029 (Preliminary) (Allura Red Coloring from India)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before April 18, 2003; Commissioners' opinions to the Secretary of Commerce on or before April 25, 2003.)

5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 3, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8651 Filed 4–4–03; 12:33 pm]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of April 7, 14, 21, 28, May 5, 12, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 7, 2003

Friday, April 11, 2003

9 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS), (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

12:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of April 14, 2003—Tentative

There are no meetings scheduled for the Week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m.—Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

''Discussion of Management Issues (Closed—Ex. 2),'' originally scheduled for March 20, 2003, was postponed to April 11, 2003.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 3, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–8625 Filed 4–4–03; 11:21 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 8, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov.*

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public

inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail *LAB@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement with the Commission. Wisconsin law (subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria''), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than 10 years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses,

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility (''unrestricted release''). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use (''restricted release''). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special ''decommissioning-possession only'' license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined

by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. NRC will continue the formal processing of the proposed Agreement which includes publication of this notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated in Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, the Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. By-product materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that

Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done in Madison, Wisconsin this ** day of June, 2003.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–8527 Filed 4–7–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Standard Data Elements for Federal Grant Applications

AGENCY: Office of Federal Financial Management (OFFM), Office of Management and Budget (OMB).

ACTION: Notice of proposed requirement to establish standard data elements.

SUMMARY: OMB proposes (1) to establish a standard set of data elements and definitions as found on the SF–424, plus five additional data elements for Federal agencies and grant applicants to use on both paper and electronic applications for discretionary grants, and (2) to require a new assurance statement to replace the current assurances found on the SF–424. The Federal E-Grants initiative calls for the development of a one-stop, electronic grant portal where potential grant recipients will receive full service electronic grant administration as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

The grantee community is familiar with most of the data elements, which have been required by Standard Form (SF) 424, ''Application for Federal Assistance,'' SF–424A, Budget Information Non-Construction; SF–424B, Assurances—Non-Construction Programs; SF–424C, Budget Information Construction Programs, and SF–424D, Assurances—Construction Programs. OMB is adding the following five new standard data elements to those already appearing on the current SF–424 and will revise the form accordingly. The five new standard data elements being added are:

(1) Requesting entity's universal identifier (see proposal to use the Duns Universal Numbering System (DUNS) in the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177–66178;

(2) Requesting entity's e-mail address;

(3) Requesting entity's country location for address purposes;

(4) Requesting entity's facsimile (Fax) number; and

(5) Requesting entity's indictor for ''Not-For-Profit'' under ''Type of Applicant'' based upon how the entity is classified with the Internal Revenue Service.

The use of government-wide standard data elements by grant applicants and the Federal agencies that award discretionary grants or cooperative agreements establishes the data standard for grant applications submitted via the E-Grants portal grant application software known as E-Apply. In order to establish data standards, this Notice also identifies how the data will be transmitted for E-Apply. The proposed electronic transmission of the data set is to use the conventions established by the American National Standards Institute (ANSI) 194 Data Transaction Set. These data elements will be incorporated into the first version of E-Apply, scheduled for release in October 2003, which will permit applicants to apply electronically for Federal grants.

The consolidated assurance statement, which is being proposed to replace the current assurances found on the SF–424B and SF–424D, is designed to provide a streamlined way for Federal agencies to obtain assurance about compliance with applicable requirements. OMB believes the addition of the consolidated assurance statement will allow applicants to proceed through the application process in a more efficient manner. Only at time of award would the grantee address any specific agency assurances that are incorporated in the award and are above and beyond the standard assurances.

DATES: Comments on the proposed data elements, definitions and consolidated assurance statement must be submitted by June 9, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *sswab@omb.eop.gov*. Please include ''Standard Data Elements Comments'' in the subject line and put the full body of your comments in the text of the electronic message and as an attachment. Please include your name,

title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandra Swab, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3993, and E-mail: *sswab@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

Standard Set of Data Elements and Definitions

The Federal E-Grants initiative, one of 24 initiatives of the Administration's overall E-Government program for improving access to Government services via the Internet, calls for the development of a one-stop, electronic grant portal where potential grant recipients will receive full service electronic grant administration. OMB is seeking to develop a standard set of data elements that will be used by grant-making Federal agencies to develop web-based grant application software. The application software, E-Apply, will permit the use of on-line grant applications by October 2003. This **Federal Register** announcement seeks public comment on establishing the current data elements and definitions of the SF–424 with the proposed five additional data elements as the standard data set that Federal agencies would include in the first version for electronic grant applications. The standard data elements are found in the attachment to this notice. The attachment identifies the current data elements and definitions found on the SF–424. The proposed data elements have been required of grant applicants when submitting SF–424s to which OMB is proposing to add five new elements: (1) Requesting entity's universal identifier (see proposal to use the DUNS in the October 30, 2002 **Federal Register**); (2) requesting entity's e-mail address; (3) requesting entity's country location; (4) requesting entity's facsimile (Fax) number; and (5) for Not-For-Profit entities only, requesting entity's indicator for ''Type of Applicant.''

Additional efforts not included in this initial proposal, seek to have the Federal government review various grants management processes that focus on different types of business lines that cut across similar grant programs. For example, grant programs that focus on research may need to have different grant application information than programs that focus on education. However, many different agency grant programs may be similar in a broad subject category and collect similar information. For those grant programs found in broad subject categories and cut across various Federal agencies, the data may be standardized and shared by collecting the data only once. This cross-agency standard data may become a subset to the standard data collected on the SF–424. When such data is identified and approved, it is the intention to revise the suite of SF–424 standard collection forms to identify cross-agency data. This effort will be done in consultation with the grants community at-large through the public comment process. It is thought the standardization of data and establishment of standard data for similar types of grant programs will enhance the collection of data and help to overall simplify the grants application and management processes.

Policy for Electronic Grant Applications

The SF–424 data elements, including the five proposed data elements, are attached for review and comment and are contained within the American National Standards Institute's (ANSI) Grant Application or Assistance Application 194 Transaction Data Set, a national electronic standard for the Federal grant application. The 194 Transaction Data Set has evolved under the auspices of the Inter-Agency Electronic Grants Committee (IAEGC), ANSI, Federal Demonstration Partnership, universities, research institutions, and Federal grant-making agencies. Using an established national electronic standard to implement the E-Apply software application helps to standardize the data conventions and provides a foundation upon which to build future applications. The attachment correlates the SF–424 data to the related data found in the 194 Transaction Data Set. Information on the 194 Transaction Data Set can be found on the Inter-Agency Electronic Grants Committee's (IAEGC) Web site at *www.iaegc.gov*.

Consolidated Assurance of Compliance for Grant Applicants

We further propose to revise the SF–424 to provide a streamlined way for Federal agencies to obtain assurances of compliance with applicable requirements. Currently, a Federal program office that uses the entire suite of SF–424 forms for its applications would require an applicant to submit assurances on, either a SF–424B, ''Assurances—Non-Construction Programs,'' or a SF–424D, ''Assurances—Construction Programs.''

The assurance forms (SF–424B/D) list many individual national policy requirements and a few selected administrative requirements based in statute, Executive Order, regulation, or OMB circular language. The national policy requirements address societal objectives such as protection of the environment or ensuring civil rights. The selected administrative matters, such as conduct of audits, relate to stewardship of public funds. The forms require the applicant's ''authorized certifying official'' to sign, thereby agreeing that the applicant will comply with the requirements if an award is made.

We propose an approach that coordinates the business processes of application and award at the time of announcing funding availability. Agencies' announcements will identify administrative and national policy requirements with which applicants must comply if they receive awards, thereby helping potential applicants make more informed decisions about whether to apply. If an entity is unable or unwilling to comply with any of these requirements, it should not invest time and money in preparing an application.

At time of application, applicants would be asked to sign the following consolidated assurance on the cover page of the SF–424, which would replace the lists of individual requirements that currently appear on the SF–424B and SF–424D:

> I have reviewed the requirements that apply to recipients of awards under this program* and assure, as the duly authorized representative of the applicant, that the applicant will comply with those requirements and other terms and conditions if it receives an award.
>
> *If you are submitting this application in response to a Federal agency announcement of a funding opportunity, consult that announcement or any associated application instructions for the Internet site or other location where you may view the generally applicable requirements. Otherwise, if you do not know where to view them, contact the office to which you are submitting this application to ask about the location.

At time of award, a successful applicant would receive an award document with terms and conditions incorporating the applicable national policy and administrative requirements. These would be the same requirements for which the applicant provided an assurance of compliance at time of application, except for any award-specific requirements that the agency

imposes or any new requirements or changes made to existing requirements after the agency issued its announcement.

This new approach for a consolidated assurance has a number of advantages:

• It is easier to give potential applicants up-to-date information on applicable requirements. National policy and administrative requirements change over time, due to enactment or adoption of new policies and repeal or revision of existing ones. Updating a standard form is a cumbersome and lengthy process, so it is difficult to keep forms up to date with the latest policy changes. The SF–424B and SF–424D, for example, are not fully up to date at this time.

• The consolidated assurance eliminates the need to update the electronic submission format each time a requirement changes. As the Federal Government moves from paper forms to electronic transactions, periodically updating the list of national policy and administrative requirements would require reprogramming the format for electronic submission of applications if each requirement was individually listed in the assurances of compliance. Reprogramming would increase costs and administrative burdens. Instead, the change would be addressed in agencies' terms and conditions, which are more easily updated.

• Potential applicants only need to consult a single source, the agency's terms and conditions, for all applicable requirements before providing assurance. Currently, an awarding agency or program office must supplement the SF–424B or SF–424D with information about agency-or program-specific requirements because the standard forms list only government-wide requirements.

It is anticipated that OMB would change the SF–424 to reflect the above assurance language changes when the additional data elements are added to the form and public comment supports such a change. Current grant application forms can be found at *http://www.whitehouse.gov/omb/grants*.

Questions and Comments

We welcome your input on any aspect of the data elements and inclusion of the consolidated assurance in place of those found on the SF–424B and SF–424D. Questions that you may wish to address include:

• Are the proposed data elements found on the current SF–424 the essential ones needed to apply for Federal grants? If you recommend adding or deleting any data elements, please explain why.

• Are the current definitions found on the SF–424 clear and explicitly define what is required for applicants to enter on the SF–424, ''Application for Federal Assistance?''

• Are the names of data elements and any terms used in describing them readily understandable? Are the terms generic enough to cover all programs and agencies in which you might have an interest? Do you have suggestions for alternate terms?

• Is the current SF–424, plus the five additional proposed data elements and assurance language, sufficient enough to establish the SF–424 as the data standard? If comments indicate a more in-depth change to the SF–424, should OMB establish this as the data standard and then proceed with a more complete revision at a later date?

• Is the assurance language feasible for use by Federal agencies in lieu of those found on the SF–424B and SF–424D?

Joseph L. Kull,

Deputy Controller.

Attachment: The attachment is a series of tables that list the name of the data element found on the SF–424 with the description found on the grant application form. The attachment also lists the data element name found in the 194 Transaction Data Set for comparison. Use of the 194 Transaction Data Set is to help define data layout for electronic transmission. Each table is titled to help better understand the groups of the data elements.

TABLE 1.—ALL FEDERAL GRANT APPLICATION INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Type of Submission (No. 1)	Self-explanatory (Identify if project application or pre-application, construction or non-construction.).	Construction Application Indicator.
Date Submitted (No. 2)	Date application submitted to Federal agency (or State if applicable)	Application Date.
Applicant Identifier	Applicant's control number (if applicable)	Applicant's Application Identification.
Date received by State (No. 3)	State use only (if applicable)	Date Received by State/Other Reviewer.
State Application Identifier	State use only (if applicable)	Reviewing Organization Application Number.
Date Received by Federal Agency (No. 4).	If this application is to continue or revise an existing award, enter date of present award.	Date Received by Federal Agency.
Federal Identifier	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.	Federal Agency Application Number.
Type of Application (No. 8)	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —''New'' means a new assistance award —''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date. —''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.	Application Type.
If Revision	Enter the appropriate choice to specify reason for renewal. (List: New, Continuation, Revision. If revision, indicate: List: Increase Award, Decrease Award, Increase Duration, Decrease Duration, Other (Specify)).	Application Purpose.
CFDA Number (No. 10)	Use the Catalog of Federal Domestic Assistance (CFDA) number of the program under which assistance is requested.	Catalog of Federal Domestic Assistance Number.
CFDA Title (No. 10)	Use the Catalog of Federal Domestic Assistance (CFDA) title of the program under which assistance is requested.	Program Name.

TABLE 1.—ALL FEDERAL GRANT APPLICATION INFORMATION—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Descriptive Title of Applicant's Project (No 11).	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.*, construction or real property projects), attach a map showing project location. For pre-application, use a separate sheet to provide a summary description of this project.	Application Title.

TABLE 2.—ORGANIZATION/APPLICANT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
DUNS New Addition	The DUNS number of the organization. (Subject to OMB approval of single identifier.).	Organization DUNS.
Applicant Name/Address (No. 5)	Legal name of applicant, name of primary organizational unit that will undertake the assistance activity, complete address of applicant, including country, if other than US, and name and telephone number and e-mail address of the person to contact on matters related to this application.	Organization Name.
Name of Federal Agency (No. 9)	Name of the Federal Agency from which assistance is being requested with this application.	Organization Type.
Organizational Unit (No. 5)	The department, service, laboratory, or equivalent level within the organization.	Department.
Organizational Unit (No. 5)	The division, office, or major subdivision of the organization	Division.
Employer Identification Number (No. 6).	Enter Employer's Identification Number (EIN) as assigned by the Internal Revenue Service.	Employer's Identification Number.
Type of Applicant (No. 7) New Addition: Not for Profit.	Enter the appropriate choice in the space provided to show the applicant type such as state or county. (List: State, County Municipal Township, Interstate, Intermunicipal, Special District, Independent School District, State Controlled Institution of Higher Learning, Private University, Indian Tribe, Individual, Profit organization, Not for Profit, Other (specify)).	Entity Type.
Congressional District (No. 14)	List the applicant's Congressional District and any (District(s) affected by the program or project.	Congressional District.

TABLE 3.—APPLICANT/INDIVIDUAL CONTACT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Contact Person, Name (No. 5)	Type of individual associated with the business process of submitting the application.	Individual Type
Contact Person, Name (No. 5)	The individual's first name	First Name.
Contact Person, Name (No. 5)	The individual's last name	Last Name.
Contact Person, Name (No. 5)	The individual's middle name.	Middle Name
Contact Person, name (No. 5)	The individual's name prefix	Prefix.
Contact Person, Name (No. 5)	The individual's name suffix	Suffix.
Contact Person, Name (No. 18a) Authorized Representative, Title.	Position title of an individual	Title.
Date Signed (No. 18e)	Date Application Signed	Signature Date.

TABLE 4.—APPLICANT/INDIVIDUAL ADDRESS INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Address, City (No. 5)	City of an organization or individual	City.
Address, County (No. 5)	County of an organization or individual	County.
Address, State (No. 5)	State of an organization or individual	State.
Address (No. 5)	Street address of an organization or individual	Street Address.
Address, Zip Code (No. 5)	Zip code of an organization or individual	Zip Code.
Contact Person, Telephone (No. 5)	Telephone number for an organization or individual.	Telephone Number.
Fax Number New Addition	Fax number for an organization or individual	Fax Number.
E-Mail Address New Addition	E-Mail address for the individual	E-Mail address.
Country New Addition	Country of an organization or individual	Country.

TABLE 5.—PROJECT INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Areas Affected by Project (No. 12)	List only the largest political entities affected (*e.g.*, State, counties, cities).	Geographic Location Name.
Proposed Projected State Date (No. 13)	Self-explanatory (Planned beginning date of project.)	Project Start Date.
Proposed Project Ending Date (No. 13)	Self-explanatory (Planned ending date of project.).	Project End.

TABLE 6.—SF–424 COVER PAGE BUDGET INFORMATION

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Estimated Funding	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item.	Budget Item Code, Budget Item Cost.
Estimated Funding	Dollar amount of the budget item	Dollar Amount.

TABLE 7.—SF–424A NON-CONSTRUCTION BUDGET

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Section A, Budget Summary (Nos. 1–5, a–g).	For applications pertaining to a single Federal grant program (Catalog of Federal Domestic Assistance number) and not requiring a functional or activity breakdown, enter on Line under Column (a) the Catalog program title and the Catalog number in Column (b). For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b). Lines 1–4, Columns (c) through (g) For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year). Line 5—Show the total for all columns used.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section B, Budget Categories (Nos. 6, a–k).	In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories. Line 6a–i—Show the totals of Lines 6a to 6h in each column. Line 6j—Show the amount of indirect cost. 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, shown under the program.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section C, non-Federal Resources (Nos. 8–12).	Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.

TABLE 7.—SF–424A NON-CONSTRUCTION BUDGET—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
	Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary. Column (b)—Enter the contribution to be made by the applicant. Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agency should leave this column blank. Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources. Column (e)—Enter totals of Columns (b), (c), and (d). Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.	
Section D, Forecasted Cash Needs (Nos. 13–15).	Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year. Line 14—Enter the amount of cash from all other sources needed by quarter during the first year. Line 15—Enter the totals of amounts on Lines 13 and 14.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section E, Budget Estimates of Federal Funds Needed for Balance of the Project (Nos. 16–20).	Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants. If more than four lines are needed to list the program titles, submit additional schedules as necessary. Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period.
Section F, Other Budget Information (Nos. 21–23).	Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency. Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Line 23—Provide any other explanations or comments deemed necessary.	Budget Item Code, Budget Item Cost, Budget Item Name, Budget Item Description, Budget Item Period, Paragraph Text.

TABLE 8.—SF–424C BUDGET INFORMATION CONSTRUCTION PROGRAM

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Budget Information Construction Programs (Nos. 1–17, a–c).	Column (a).—If this is an application for a ''New'' project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under ''Cost Classification''. If this application entails a change to Item an existing award, enter the eligible amounts approved under the previous award for the items under ''Cost Classification''. Column (b).—If this is an application for a ''New'' project, enter that portion of the cost of each item in Column a. that is not allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs. If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs from column (a) reflected in this application.	Budget Item Code, Budget Item Cost, Budget Item Description, Budget Item Period.

TABLE 8.—SF–424C BUDGET INFORMATION CONSTRUCTION PROGRAM—Continued

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
	Line 1—Enter estimated amounts needed to cover administrative expenses. Do not include costs, which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land, which is allowable for Federal participation and certain services in support of construction of the project. Line 2—Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements). Line 3—Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc. Line 4—Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan). Line 5—Enter estimated engineering costs, such as surveys, tests, soil borings, etc. Line 6—Enter estimated engineering inspection costs. Line 7—Enter estimated costs of site preparation and restoration which are not included in the basic construction contract. Line 9—Enter estimated cost of the construction contract. Line 10—Enter estimated cost of office, shop, laboratory, safety equipment, etc., to be used at the facility, if such costs are not included in the construction contract. Line 11—Enter estimated miscellaneous costs. Line 12—Total of items 1 through 11. Line 13—Enter estimated contingency costs (Consult the Federal agency for the percentage of the estimated construction cost to use.). Line 14—Enter the total of lines 12 and 13.. Line 15—Enter estimated program income to be earned during the grant period, *e.g.,* salvaged materials, etc. Line 16—Subtract line 15 from line 14. Line 17—This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column (c) by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.	

TABLE 9.—ASSURANCES, NON-CONSTRUCTION (SF–424B)

[To Be Replaced by Proposed Assurance Statement]

SF–424 Caption or block no.	SF–424 Description	194 Data Element Name for Electronic Submission
Assurance, Federal Debt, State Review	16. Applicants should contact the State Single Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization is submitted as part of the application).	Yes or No Condition.
Assurance, Federal Debt State Review	See above	Yes or No Condition Description.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Response.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Type.

TABLE 10.—ASSURANCES, CONSTRUCTION (SF–424D)

[To Be Replaced by Proposed Assurance Statement]

SF–424 Caption or Block No.	SF–424 Description	194 Data element name for electronic submission
Assurance, Federal Debt, State Review	16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization is submitted as part of the application).	Yes or No Condition Date.
Assurance, Federal Debt State Review	See above	Yes or No Condition Description.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Response.
Assurance, Federal Debt, State Review	See above	Yes or No Condition Type.

[FR Doc. 03–8435 Filed 4–7–03; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Consolidated Federal Financial Report

AGENCY: Office of Federal Financial Management (OFFM), Office of Management and budget (OMB).

ACTION: Notice of proposed consolidated Federal Financial Report.

SUMMARY: The Office of Federal Financial Management proposes to consolidate several existing financial reporting forms into a single financial report to be used by the Federal agencies and grant recipients. The purpose of this consolidated Federal Financial Report is to provide grant recipients with a standard format and consistent reporting requirements to be used for reporting financial information on formula and discretionary grants and cooperative agreements. The Federal awarding agencies jointly developed this format as one part of the implementation of the Federal Financial Assistance management Improvement Act of 1999 (Pub. L. 106–107).

DATES: All comments on this proposals should be in writing, and must be received by June 9, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *ghatch@omb.eop.gov.* Please include ''Consolidated Federal Financial Report'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization postal address telephone number and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202 395–3952. Comments may be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Garrett hatch, Office of Federal Financial Management, Office of management and budget, telephone 202–395–0786, and E-mail: *ghatch@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This notice addresses issues raised during the public consultation process mandated by Public Law 106–107. Many areas of financial reporting were identified as being in need for improvement and streamlining. Commenters suggested the use of a single form, consistency in reporting frequency and requirements elimination of duplicate information, and electronic submission of reports.

The Financial Status Report (SF 269 and 269a) and the Federal Cash Transaction Report (SF 272 and 272a) were reviewed and analyzed to determine the data elements common to multiple forms and the data elements unique to any single form. Consolidation of these forms in intended to reduce the reporting burden placed on award recipients and to streamline the data collection process.

In addition to the consolidated set of data elements, four new data elements were added:

(1) Reporting entity's universal identifier (*see* proposal to use the Duns Universal Numbering System (DUNS) in the October 30, 2002, **Federal Register,** Vol 67, No. 210, pp. 66177–66178);

(2) Total recipient share required;

(3) Remaining recipient share to be provided; and

(4) Reporting entity's e-mail address.

This information was combined and resulted in four standard sections for reporting transactions and balances. The standard sections include: Status of Federal Cash, Status of Federal Expenditures and Unobliged Balance (of Federal funds), Status of Recipient Share, and Program Income.

Federal agencies will not be required to collect all of the information included on the proposed form. The Federal agency will identify the sections that must be completed by recipients and the frequency of report submission. We have allowed for flexibility in the frequency of reporting but have established a uniform due date of no later than 30 days after of each specified reporting period.

The immediate use of this proposed form would be in a paper format. However, the data elements included in the paper format are intended to be used in the future for the electronic submission and collection of financial information.

We welcome your input on any aspect of the Federal Financial Report.

Questions that you may wish to address include:

Is the format of the form easy to understand and complete? Do you have suggestions for improvements in the appearance of the form? Are the line item instructions understandable? have we sufficiently defined the terms? Are there any data elements that could be eliminated from the form? If your recommend eliminating an item, please explain your recommendation. Could we provide any additional information that would be useful to the users of this form?

Joseph L. Kull,

Deputy Controller.

BILLING CODE 3110–01–P

Instructions for Federal Agencies

The Federal agency will instruct award recipients how to use this form. The Federal Financial Report (FFR) may be used to:

- report the "Status of Federal Cash" (lines a through c) either for a single award or for multiple awards (For multiple awards, complete page 2 of the form and do not complete the following lines on page 1: 2, 5, 6, 8, 10d-q, and 11); **OR**
- report all Federal and recipient expenditures for a single award (lines d – q); **OR**
- report both the "Status of Federal Cash" and all Federal and recipient expenditures for a single award (completing all lines on the report).

Reporting Frequency:

- The Federal Financial Report (FFR) may be required on a quarterly, semi-annual, or annual basis. The Federal agency shall determine the frequency of the FFR for each project or program, considering the size and complexity of the particular project or program. A final report shall be required at the completion of the agreement.
- The following report period end dates may be used for the FFR: 3/31, 6/30, 9/30 and/or 12/31.
- The Federal agency shall require recipients to submit the FFR, regardless of the frequency of the report, no later than 30 days after the end of each specified reporting period. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient. Final reports shall be submitted no later than 90 days after the project end date.
- The Federal agency shall inform recipients at time of award of the reporting frequency, the periods covered by each report, and the dates the reports are due.

FEDERAL FINANCIAL REPORT

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, attach page 2)	OMB Approval No.	Page 1	of pages

3. Recipient Organization (Name and complete address including Zip code)			
4. Universal Identifier Number	5. Recipient Account Number or Identifying Number (To report multiple grants, attach page 2)	6. Final Report ☐ Yes ☐ No	7. Basis of Accounting ☐ Cash ☐ Accrual

8. Funding/Grant Period From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions	I. Previously Reported	II. Current Period	III. Cumulative
Status of Federal Cash (To report multiple grants, attach page 2):			
a. Cash Receipts			
b. Cash Disbursements			
c. Cash on hand (line a minus b)			
Status of Federal Expenditures and Unobligated Balance:			
d. Total Federal funds authorized			
e. Federal share of expenditures			
f. Federal share of unliquidated obligations (current period)			
g. Total Federal share (sum of lines e and f)			
h. Unobligated balance of Federal funds (line d minus g)			
Status of Recipient Share:			
i. Total recipient share required			
j. Recipient share of expenditures			
k. Recipient share of unliquidated obligations (current period)			
l. Total recipient share (sum of lines j and k)			
m. Remaining recipient share to be provided (line i minus l)			
Program Income:			
n. Program income expended in accordance with the deduction alternative			
o. Program income expended in accordance with the addition alternative			
p. Unexpended program income (current period)			
q. Total Federal program income earned (sum of lines n,o and p)			

11. Indirect Expense	a. Type of Rate (place "X" in the appropriate box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed			
	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:

13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all expenditures and unliquidated obligations are for the purposes set forth in the award documents.

a. Typed or Printed Name and Title of Certifying Official	c. Telephone (Area code, number and extension)
	d. Email address
b. Signature of Authorized Certifying Official	e. Date Report Submitted
	14. Agency use only:

Prescribed by OMB A-102 and A-110 ☐

Federal Financial Report

(Attachment for reporting multiple grants)

1. Federal Agency and Organizational Element to which report is submitted (Box 1 on Page 1)	2. Recipient Organization (Box 3 on Page 1)	3. Universal Identifier Number (Box 4 on Page 1)
4. Period covered by this report (Box 9 on page 1) From (month, day, year):	To (month, day, year):	

5. List information below for each grant covered by this report. Use additional pages if more space is required.

Federal Grant Number	Recipient Account Number	Net Disbursement	Cumulative Net Disbursement
		$	$
TOTALS (Should correspond to the amounts on Line 10 b, columns II and III from Page 1)		$	$

Line Item Instructions for Page 1 of the Federal Financial Report

FFR Box Number	Reporting Item	Instructions
Cover Information		
1.	Federal Agency and Organizational Element to Which Report is Submitted	Enter name of the Federal funding agency to which report is submitted.
2.	Federal Grant or Other Identifying Number Assigned by Federal Agency	Enter grant number assigned to recipient by the Federal funding agency. For multiple grants, report this information on page 2 and indicate reference to page 2 in this box. *Do not complete this line if reporting for multiple awards.*
3.	Recipient Organization (Name and complete address including Zip Code)	Enter name and address of recipient organization.
4.	Universal Identifier Number	Enter the recipient organization's Universal Identifier Number.
5.	Recipient Account Number or Identifying Number	Enter account number or any other identifying number used by the recipient. For recipient use only; not required by the Federal funding agency. For multiple grants, report this information on page 2 and indicate reference to page 2 in this box. *Do not complete this line if reporting for multiple awards.*
6.	Final Report (Yes/No)	Mark appropriate box. Check "yes" only if this is the final report for the grant. *Do not complete this line if reporting for multiple awards.*
7.	Basis of Accounting (Cash/Accrual)	Mark appropriate box.
8.	Funding/Grant Period, From: (Month, Day, Year)	Enter the beginning and ending dates of the current funding period. NOTE: If this is a multi-year program, the Federal agency may require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period". *Do not complete this line if reporting for multiple awards.*
	Funding/Grant Period ,To: (Month, Day, Year)	See above
9.	Period Covered by this Report, From: (Month, Day, Year)	Enter beginning and ending dates of the current period (amounts to be reported in column II of line item 10) of this report.
	Period Covered by this Report, To: (Month, Day, Year)	See above
10.	Transactions	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in the same funding period. If this is the first report of the funding period, leave the column I blank. The amounts entered in column II will be for the period indicated in line item 9. The amounts included in column III are the sum of columns I and II. If this is the only report of the funding period, enter amounts in column III and leave columns I and II blank. If you

		need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.
Status of Federal Cash:		
10a.	Cash Receipts	Enter the amount of cash received from this funding agency.
10b.	Cash Disbursements	Enter the amount of cash disbursed for Federal share. (For multiple grants, report each grant separately on page 2. The total on page 2 should reconcile to the amounts reported on page 1.)
10c.	Cash on hand (line a minus b)	Enter the amount of line a minus line b.
Status of Federal Expenditures and Unobligated Balance: *Do not complete this section if reporting for multiple awards.*		
10d.	Total Federal funds authorized	Enter the total Federal funds authorized for the current funding period.
10e.	Federal share of expenditures (line e equals line b for cash basis reporting)	Enter the amount of Federal funds expended (less any rebates, refunds or other credits). For reports prepared on the cash basis, expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses *charged,* the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on the accrual basis, expenditures are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses *incurred,* the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods or other property received, for services performed by employees, contractors, subgrantees, and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
10f.	Federal share of unliquidated obligations (current period only) (This Period)	Enter the Federal share of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. For cash basis reporting. this is the amount of obligations incurred which have not been paid. For accrual basis reporting, this is the amount of obligations incurred for which an expenditure has not been recorded. On the final report, this line must be zero.
10g.	Total Federal share (sum of lines e and f) (This Period)	Enter the sum of lines e and f.
10h.	Unobligated balance of Federal funds (line d minus g)	Enter the amount of line d minus line g.

Status of Recipient Share: *Do not complete this section if reporting for multiple awards.*		
10i.	Total Recipient share required	Enter the required recipient funds to be provided (required match or cost sharing amount).
10j.	Recipient share of expenditures	Enter the amount of recipient funds expended as defined in 10 **e**. Program income used to finance the non-Federal share of the project or program should be included this amount.
10k.	Recipient share of unliquidated obligations (current period only) (This Period)	Enter the recipient share of unliquidated obligations, including unliquidated obligations to subgrantees and contractors, as defined in 10 f. On the final report, this line must be zero.
10l.	Total Recipient share (sum of lines j and k) (This Period)	Enter the sum of lines j and k. Recipient share can exceed required match amount as stated in 10 i.
10m.	Remaining recipient share to be	Enter amount of line i minus line l. If recipient share in line 10

	provided (line i minus l) (Cumulative)	l is greater than the required match amount in 10 i, enter zero.
Program Income: *Do not complete this section if reporting for multiple awards.*		
10n.	Program income expended in accordance with the deduction alternative	Enter the amount of program income that was deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.
10o.	Program income expended in accordance with the addition alternative	Enter the amount of program income that was added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program activities.
10p.	Unexpended program income (current period only) (This Period)	Enter the Federal amount of program income that has been earned but not expended.
10q.	Total Federal program income earned (sum of lines n, o and p) (Cumulative)	Enter the sum amount of lines n, o and p.
11a.	Indirect Expense, Type of Rate (Provisional, Predetermined, Final, or Fixed)	Mark appropriate box.
11b.	Indirect Expense, Rate	Enter the indirect cost rate in effect during the reporting period.
11c.	Indirect Expense, Base	Enter the amount against which the rate was applied for the current reporting period.
11d.	Indirect Expense, Total Amount	Enter the amount of line b times line c.
11e.	Indirect Expense, Federal Share	Enter the amount of the Federal share of line 11 d.
Remarks and Certification		
12.	Remarks	Enter any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation, if applicable.
13a.	Typed or Printed Name and Title Of Certifying Official	Enter the name and title of the authorized certifying official.
13b.	Signature of Authorized Certifying Official	Authorized certifying official must sign here.
13c.	Telephone (Area Code, number and extension)	Enter telephone number (including area code and extension) of individual listed in line 13 a.
13d.	Email address	Enter the email address of the individual listed in 13 a.
13e.	Date Report Submitted	Enter the date the form is submitted to the Federal agency.
14.	Agency Use Only	This section is reserved for Federal Agency Use.

Line Item Instructions for Page 2 of the Federal Financial Report

(To be completed only if reporting for multiple awards)

FFR Box Number	Reporting Item	Instructions
1.	Federal Agency and Organizational Element to Which Report is Submitted	Enter name of the Federal funding agency to which report is submitted. Same as Box 1 on Page 1.
2.	Recipient Organization	Enter only the name of the recipient organization.
3.	Universal Identifier Number	Enter the recipient organization's Universal Identifier Number.
4.	Period Covered by this Report, From: (Month, Day, Year)	Enter beginning and ending dates of the current period (amounts to be reported in column II of line item 10) of this report.
	Period Covered by this Report, To: (Month, Day, Year)	See above.
5.	Federal Grant Number	List the grant numbers assigned to recipient by the Federal funding agency.
	Recipient Account Number	List the account numbers or any other identifying number used by the recipient. For recipient use only; not required by the Federal funding agency.
	Net Disbursement	Enter the amount of cash disbursed in the current period for Federal share. The column total on page 2 should reconcile to the amount reported on page 1 in box 10b, column II.
	Cumulative Net Disbursement	Enter the cumulative amount of cash disbursed for Federal share. The column total on page 2 should reconcile to the amount reported on page 1 in box 10b, column III.

[FR Doc. 03–8436 Filed 4–7–03; 8:45 am]
BILLING CODE 3110––01–C

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084. Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17Ac2–1 under the Securities Exchange Act of 1934 (the ''Act'') requires transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one and one-half hours, with a total burden of 150 hours.

Rule 19d–2 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 3, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8519 Filed 4–7–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (El Paso Corporation, Common Stock, $3.00 par value) File No. 1–14365

April 2, 2003.

El Paso Corporation, a Delaware corporation (''Issuer''), has filed an

application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $3.00 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved resolutions on December 6, 2002 to withdraw its Security from listing on the Exchange. The Issuer determined that it is not in the best interest of the Issuer or its stockholders to continue to be subject to the limitations and cost associated with maintaining the PCX's listing requirements for its Security. In addition, the Issuer believes that it is desirable and in the best interests of the Issuer and its stockholders to delist its Security from the PCX. The Issuer states that the Security will continue to trade on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under section 12(b)[3] of the Act and shall not affect its listing on the NYSE or its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 25, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8440 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25988; File No. 812–12897]

Metropolitan Life Investors USA Insurance Company, et al.

April 1, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities and for an order of exemption pursuant to section 17(b) of the Act.

APPLICANTS: MetLife Investors USA Insurance Company (''MetLife Investors USA''), Security Equity Life Insurance Company (''Security Equity Life''), MetLife Investors USA Separate Account A (''Separate Account A''), Security Equity Life Separate Account 10 (''Separate Account 10'' and Security Equity Life Separate Account 13 (''Separate Account 13'').

FILING DATES: The application was filed on October 24, 2002, and amended and restated on March 28, 2003.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitutions by MetLife Investors and Security Equity Life of Class A shares of the MetLife Stock Index Portfolio (the ''Replacement Portfolio'') of Metropolitan Series Fund, Inc. (''Metropolitan Series'') and held by Separate Account A, Separate Account 10, and Separate Account 13 (each an ''Account,'' together, the ''Accounts'') for Initial Class shares of the Index 500 Portfolio (the ''Substituted Portfolio'') of the Fidelity Variable Insurance Products Fund II (''VIP Fund II'') to support variable annuity or variable life insurance contracts issued by MetLife Investors USA or Security Equity Life (collectively, the ''Contracts''). Applicants also request an order of the Commission exempting them, the Metropolitan Series, VIP Fund II, the Replacement Portfolio, and the Substituted Portfolio as well as the proposed substitution from section 17(a) of the 1940 Act to the extent necessary to permit MetLife Investors USA and Security Equity Life to carry out the proposed substitutions by redeeming the VIP Fund II shares in-kind and using the proceeds to purchase the shares issued by the Metropolitan Series.

HEARING OR NOTIFICATION OF HEARING: An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Christopher A. Martin, Esq., Metropolitan Life Insurance Company, 501 Boylston Street, Boston, MA 02116 and Richard C. Pearson, Esq., MetLife Investors USA Insurance Company, 22 Corporate Plaza Drive, Newport Beach, California 92660. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants Representations

1. MetLife Investors USA is a stock life insurance company organized under Delaware law in 1960. MetLife Investors USA is authorized to transact the business of life insurance, including annuities, in the District of Columbia and all states except New York.

2. MetLife Investors USA is a wholly-owned subsidiary of MetLife Investors USA Group, Inc. (''MLIG'') (formerly, Security First Group, Inc.). MLIG, in turn, is an indirect wholly-owned subsidiary of MetLife, Inc. (''MetLife''), the parent of Metropolitan Life Insurance Company (''MLIC''). MetLife is listed on the New York Stock Exchange and, through its affiliates, is a leading provider of insurance and financial products and services to individuals and groups. MetLife Investors USA Insurance Company changed its name from Security First Life Insurance Company on January 31, 2001.

3. Security Equity Life is a stock life insurance company domiciled in New York. Security Equity Life was established in 1983 as a wholly-owned subsidiary of Security Mutual Life Insurance Company of New York. Security Equity Life is admitted to sell life insurance and annuities in 40 states and the District of Columbia. Security Equity Life sells corporate-owned life insurance contracts in all of these jurisdictions and individual contracts to residents of New York. Security Equity Life is a wholly-owned subsidiary of GenAmerica Financial Corporation, an intermediate stock holding company, acquired by MetLife on January 6, 2000.

4. Separate Account A is a separate investment account of MetLife Investors USA established under Delaware law on May 29, 1980. Separate Account A currently has 60 subaccounts. Each subaccount invests in a corresponding portfolio of a registered management investment company. A number of variable annuity Contracts that invest in the Substituted Portfolio have been issued through Separate Account A (the, ''MetLife Investors Contracts'') and interests in the Account offered through such Contracts have been registered under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4.

5. MetLife Investors USA is the legal owner of the assets in Separate Account A. If, and to the extent so provided in the MetLife Investors Contracts, that portion of the assets of Separate Account A equal to its reserves and other liabilities under outstanding MetLife Investors Contracts are not chargeable with liabilities arising out of any other business MetLife Investors USA may conduct. Income, gains and losses, realized or unrealized, from the assets of Separate Account A are credited to or charged against the Account without regard to the other income, gains, or losses of MetLife Investors USA.

6. Separate Account 10 is a separate investment account of Security Equity Life established under New York law on December 15, 1994. Separate Account 10 serves as one of several separate account funding vehicles for certain variable life insurance contracts that are exempt from registration under section 4(2) of the 1933 Act and Regulation D thereunder (the ''Security Equity Life PP Contracts''). Each separate account available as an investment option under the Security Equity Life PP Contracts invests in a corresponding portfolio of a registered management investment company; Separate Account 10 invests only in the Substituted Portfolio.

7. Security Equity Life is the legal owner of the assets in Separate Account 10. If, and to the extent so provided in the Security Equity Life PP Contracts, that portion of the assets of Separate Account 10 equal to its reserves and other liabilities under outstanding Security Equity Life PP Contracts will not be charged with liabilities that arise from any other business that Security Equity Life may conduct. Income, gains and losses, whether or not realized, from the assets of Separate Account 10 are, in accordance with the Security Equity Life PP Contracts, credited to or charged against the Account without regard to the other income, gains, or losses of Security Equity Life.

8. Separate Account 13 is a separate investment account of Security Equity Life established under New York law on December 30, 1994. Separate Account 13 currently has 20 subaccounts. Each subaccount invests in a corresponding portfolio of a registered management investment company. A number of variable life insurance Contracts that invest in the Substituted Portfolio have been issued through Separate Account 13 (the, ''Security Equity Life Contracts'') and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

9. Security Equity Life is the legal owner of the assets in Separate Account 13. If, and to the extent so provided in the Security Equity Life Contracts, that portion of the assets of Separate Account 13 equal to its reserves and other liabilities under outstanding Security Equity Life Contracts will not be charged with liabilities arising from any other business that Security Equity Life may conduct. Income, gains and losses, whether or not realized, from the assets of Separate Account 13 are, in accordance with the Security Equity Life Contracts, credited to or charged against the Account without regard to the other income, gains, or losses of Security Equity Life.

10. The terms of the MetLife Investors Contracts permit Contract owners to transfer Contract value under the Contracts between and among the available subaccounts of Separate Account A and from such subaccounts to MetLife Investors USA's general account during the accumulation period and to exchange annuity units during the annuity period. Although MetLife Investors USA does not currently charge a fee for Contract value transfers or annuity unit exchanges, the Contracts reserve for it the right to impose a $10 charge for each transfer or exchange.

11. The terms of the Security Equity Life PP Contracts permit Contract owners to transfer Contract value under the Contracts between and among the separate accounts available under the Contracts on any valuation day within the following guidelines: (a) Contract value cannot be allocated to more than five separate accounts at any one time, (b) transfer requests must be in writing and in a form acceptable to Security Equity Life, (c) except as described below, only one transfer is permitted in each Contract year, and (d) Security Equity Life reserves the right to limit the amount of any transfer. Notwithstanding this contractual limitation, Security Equity Life currently permits up to 12 transfers per Contract year between or among separate accounts that invest in underlying portfolios within a single series management investment company or in underlying portfolios managed by the same investment manager. All transfer requests made on a single valuation day count as a single transfer. Security Equity Life does not impose a charge for transfers.

12. The terms of the Security Equity Life Contracts permit Contract owners to transfer Contract value under the contracts between and among available subaccounts on any valuation day within the following guidelines: (a) Contract value cannot be allocated to more than five subaccounts and the fixed account (*i.e.*, Security Equity Life's general account) at any time, (b) transfer requests must be in writing and in a form acceptable to Security Equity Life, (c) except as described below, only one transfer is permitted in each Contract year, and (d) Security Equity Life reserves the right to limit the amount of any transfer. Notwithstanding this contractual limitation, Security Equity Life currently permits up to 12 transfers per Contract year between or among subaccounts. All transfer requests made on one valuation day count as a single transfer. Security Equity Life does not impose a charge for transfers.

13. Under the Contracts, MetLife Investors USA and Security Equity Life reserve the right to substitute shares of one portfolio for shares of another, including a portfolio of a different management investment company. Three of the MetLife Investors Contracts require Contract owners to approve any substitution. None of the other MetLife Investors Contracts nor any of the Security Equity Life Contracts require such approval. The following is representative of the Contract provisions reserving this right to substitute that appears in the MetLife Investors Contracts and the Security Equity Life Contracts:

MetLife Investors Contracts That Require Contract Owner Approval

The separate account may not change the fund shares of a series unless approved by a vote of the majority of the units entitled to vote and as provided by the [1940] Act.

MetLife Investors Contracts That Do Not Require Contract Owner Approval

If shares of any fund should no longer be available for investment by a series or if in the judgment of the Company further investment in shares of any fund should become inappropriate in view of the purposes of the contracts, the Company may substitute for each fund share already purchased, shares of another fund or other securities, and apply future purchase payments under the contracts to the purchase of shares of another fund or other securities. The separate account may not change the fund shares of a series unless approved by the [1940] Act. The separate account may buy other securities for other series or contracts, or if requested by a contract owner, convert units from one series or contract to another.

Security Equity Life PP Contracts

For any Separate Account, [Security Equity Life] has the right to substitute a new portfolio for the portfolio in which the Separate Account invests, to substitute new Separate Accounts, to combine two or more Separate Accounts, to cause a Separate Account that is managed directly by an investment manager to instead invest its assets in shares or units of portfolios managed by one or more investment managers, to cause a Separate Account that invests its assets in shares or units of a portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Accounts or any other investment option. Subject to any required regulatory approvals, [Security Equity Life] reserves the right to transfer assets of a Separate Account to another Separate Account which [Security Equity Life] determines to be associated with the class of contracts to which the contract belongs.

Security Equity Life Contracts

For any Separate Account Division, [Security Equity Life] has the right to substitute a new portfolio for the portfolio in which the Separate Account invests, to substitute new Separate Account Divisions, to combine two or more Separate Account Divisions, to cause a Separate Account Division that is managed directly by an investment manager to instead invest its assets in shares or units of portfolios managed by one or more investment managers, to cause a Separate Account Division that invests its assets in shares or units of a portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Account Division or any other investment option. Subject to any required regulatory approvals, [Security Equity Life] reserves the right to transfer assets of a Separate Account Division to another Separate Account Division which [Security Equity Life] determines to be associated with the class of contracts to which the contract belongs.

14. In the prospectuses for the Contracts, MetLife Investors USA and Security Equity Life disclose their right to substitute shares of one portfolio for shares of another. All of the prospectuses for the MetLife Investors Contracts disclose a requirement that approval of Contract owners invested in an affected portfolio is needed prior to any substitution, regardless of whether or not the related Contract requires such approval. Consistent with Contractual provisions, the prospectuses for the Security Equity Life Contracts and the private placement memoranda for the Security Equity Life PP Contracts do not disclose any such approval requirement. The following is representative disclosure about substitutions that appears in each prospectus and private placement memorandum:

MetLife Investors USA Prospectus

MetLife Investors USA may substitute shares of another fund for Fund shares directly purchased and apply future Purchase Payments under the Contracts to the purchase of these substituted shares if the shares of a Fund are no longer available or further investment in such shares is determined to be inappropriate by MetLife Investors USA's management in view of the purposes of the Contracts. However, no substitution is allowed unless a majority of the Owners entitled to vote (those who have invested in the Series) and the SEC approves the substitution under the 1940 Act.

Security Equity Life Private Placement Memorandum

For any Separate Account, subject to any required regulatory approvals, [Security Equity Life] has the right to substitute a new Underlying Portfolio for the Underlying Portfolio in which the Separate Account invests, to substitute new Separate Accounts, to combine two or more Separate Accounts, to cause a Separate Account that is managed directly by an investment manager to instead invest its assets in shares or units of an Underlying Portfolio, to cause a Separate Account that invests its assets in shares or units of an Underlying Portfolio to instead be managed directly by an investment manager, and to eliminate any existing Separate Account or any other investment option.

Security Equity Life VLI Prospectus

[Security Equity Life] reserves the right, subject to compliance with applicable law, to make additions to, deletions from, or substitutions for the shares that are held by the Separate Account or that the Separate Account may purchase. Security Equity Life reserves the right to eliminate the shares of any of the Underlying Portfolios and to substitute the shares of another registered open-end investment company if the shares of an Underlying Portfolio are no longer available for investment or if, in Security Equity Life's judgment, further investment in any Underlying Portfolio becomes inappropriate in view of the purposes of the Separate Account. [Security Equity Life] will not substitute any shares attributable to a Contract Holder's interest in a Division of a Separate Account without notice to the Contract Holder and prior approval of the SEC, to the extent required by the 1940 Act or other applicable law. Nothing contained in this Prospectus shall prevent the Separate Account from purchasing other securities for other series or classes of contracts, or from permitting a conversion between series or classes of contracts on the basis of requests made by Contract Holders.

15. The VIP Fund II is registered as an open-end management investment company under the 1940 Act and currently offers 5 separate investment portfolios, one of which would be involved in the proposed substitution. The VIP Fund II issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company (''FMR'') serves as the investment adviser to each portfolio.

16. FMR and VIP Fund II on behalf of the Substituted Portfolio have entered into a subadvisory agreement with Deutsche Asset Management, Inc. (''DAMI'') to provide portfolio management services pursuant to which DAMI chooses the Substituted Portfolio's investments and places orders to buy and sell the Substituted Portfolio's investments. DAMI is a wholly-owned subsidiary of Deutsche Bank AG.

17. In addition, FMR has also entered into a subadvisory agreement with FMR Co., Inc. (''FMRC'') on behalf of the Substituted Portfolio, pursuant to which FMRC may provide investment advisory services for the Substituted Portfolio.

18. The Metropolitan Series is registered as an open-end management investment company under the 1940 Act and currently offers 20 separate investment portfolios, one of which would be involved in the proposed substitution. The Metropolitan Series issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. MetLife Advisers is the investment adviser of each portfolio of the Metropolitan Series. MetLife Advisers is an indirect wholly-owned subsidiary of MetLife.

19. MetLife Advisers has a subadvisory agreement with MLIC whereby MLIC makes the day-to-day investment management decisions for the Replacement Portfolio. MLIC also manages its own investment assets and those of certain affiliated companies and other entities. As of December 31, 2002, MLIC had approximately $250 billion in

assets under management. MetLife Advisers is responsible for overseeing MLIC and for making recommendations to the Metropolitan Series' board of directors relating to hiring and replacing any subadviser. MetLife Advisers also performs general administrative and management services for the Metropolitan Series. MLIC's principal offices are located at One Madison Avenue, New York, New York 10010. MLIC also is the Metropolitan Series' principal underwriter and distributor.

20. MetLife Investors Distribution Company (''MetLife Investors Distribution'') serves as principal underwriter and distributor for the MetLife Investors Contracts. MetLife Investors Distribution is an indirect wholly-owned subsidiary of MetLife. MetLife Investors Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''1934 Act'') and is a member of the National Association of Securities Dealers, Inc (''NASD''). MetLife Investors Distribution may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized to sell the MetLife Investors Contracts.

21. Walnut Street Securities, Inc. (''Walnut Street'') serves as principal underwriter and distributor for Security Equity Life PP Contracts and Security Equity Life Contracts. Walnut Street is a wholly-owned subsidiary of GenAmerica Corporation. Walnut Street is registered as a broker-dealer under the 1934 Act and is a member of the NASD. Walnut Street may enter into selling agreements with other broker-dealers registered under the 1934 Act whose representatives are authorized to sell the Security Equity Life PP Contracts and Security Equity Life Contracts.

22. MetLife Investors USA and Security Equity Life propose to substitute Class A shares of Replacement Portfolio for Initial Class shares of the Substituted Portfolio held in the Accounts (the ''proposed substitutions''). At the current time, most variable life insurance and variable annuity contracts being actively marketed by MetLife affiliated life insurance companies that offer an S&P 500 Index investment portfolio, offer the Replacement Portfolio. The proposed substitutions are part of efforts by MetLife Investors USA and Security Equity Life to standardize investment options offered through variable life insurance and variable annuity contracts across all MetLife affiliated life insurance companies. Investment option standardization is expected to make such contracts more efficient to administer and oversee, thereby reducing costs to the companies and improving service to owners of all of the contracts. For example, one variable annuity operations center provides contract administration and contract owner services for most of the affiliated life insurance companies. Standardizing product features, such as investment options, will foster more efficient administration of the Contracts, thereby improving quality control and Owner satisfaction. Similarly, as part of this standardization process, several other mutual funds managed by companies affiliated with Metropolitan Life Insurance Company are being merged into investment portfolios of Metropolitan Series, including the MetLife Portfolio. This should, as with the proposed substitution, increase the Portfolio's net assets and lead to lower overall expenses for the Portfolio. By way of other examples, most sales representatives will only have to be familiar with one S&P 500 Index portfolio offering rather than several. Likewise, for most contracts, only one prospectus, rather than several, for an S&P 500 Index portfolio would have to be printed.

23. Though not a principal reason for the proposed substitutions, the substitutions would have the effect of transferring Contract values to an investment portfolio managed by MLIC, an affiliated person of MetLife Investors USA and Security Equity Life, thereby increasing the management fees to MLIC.

24. Applicants believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the investment objectives and principal investment strategies of the Replacement Portfolio are substantially identical to those of the Substituted Portfolio so that Contract owners will have continuity in investment and risk expectations. In addition, the types of investment advisory and administrative services provided to the Replacement Portfolio are substantially the same as those provided to the Substituted Portfolio.

25. Although net expenses for the Substituted Portfolio were slightly lower than those for the Replacement Portfolio for the year ended December 31, 2002, Applicants note that the expense ratio for the Substituted Portfolio before voluntary waivers and reimbursements was higher than that of the Replacement Portfolio. More significantly, Applicants propose to limit Contract charges (discussed below) attributable to Contract value invested in the Replacement Portfolio following the proposed substitutions, to a rate that would offset the expense ratio differential between the Substituted Portfolio's 2002 expense ratio and the expense ratio for the Replacement Portfolio.

26. Applicants believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the Replacement Portfolio is larger than the Substituted Portfolio and has excellent prospects for future growth. Although almost all equity mutual funds have declined in size over the last two years (due primarily to equity market declines, but also as a result of investor redemptions), the Replacement Portfolio has, on a percentage basis, declined in size less than the Substituted Portfolio. In large part this is because it has gained new investors. As indicated above, the Applicants anticipate that, through mergers with affiliated funds and being added as an investment option in variable annuity and life insurance contracts of MetLife affiliated insurance companies, the Replacement Portfolio will continue to add new investors.

Size and continued growth are important factors in the performance of an index portfolio because they have a critical impact on expense levels. The Replacement Portfolio had an expense ratio in 2002 of 0.31%. Applicants believe that with the growth anticipated for the Portfolio, it has excellent prospects of maintaining or even lowering that ratio in future years. Although the Substituted Portfolio had an actual expense ratio of 0.28% for 2002, it achieved that ratio only after a reimbursement of 0.05% from FMR, its investment adviser. The reimbursement is voluntary and FMR may cease reimbursing the Portfolio at any time. In addition, FMR has the ability to seek repayment of the reimbursed amounts under certain circumstances in future years.

Applicants also believe that replacing the Substituted Portfolio with the Replacement Portfolio is appropriate and in the best interests of Contract owners because the Replacement Portfolio has had better performance than the Substituted Portfolio. Although, being index portfolios, performance differences are very small, the Replacement Portfolio has consistently outperformed the Substituted Portfolio in recent years.

27. The following chart sets out the investment objective and principal investment strategies of the Substituted Portfolio and the Replacement Portfolio, as stated in their respective prospectuses.

Substituted portfolio	Replacement portfolio
Index 500 Portfolio Investment Objective: Seeks investment results that correspond to the total return of common stocks publicly traded in the United States, as represented by the S&P 500 Index. Principal Investment Strategies: The Portfolio will normally invest at least 80% of its assets in common stocks included in the S&P 500 Index. The Portfolio may not always hold all of the same securities as the S&P 500 Index. The subadviser may use statistical sampling techniques to attempt to replicate the returns of the S&P 500 Index. Statistical sampling techniques attempt to match the investment characteristics of the S&P 500 Index and the Portfolio by taking into account such factors as capitalization, industry exposures, dividend yield, price/earnings ratio, price/book ratio, and earnings growth. The Portfolio also expects to lend securities to earn income for the Portfolio. The Portfolio may lend its securities to broker-dealers or other institutions to earn income. The Portfolio may also use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices or other factors that affect security values.	MetLife Stock Index Portfolio. Investment Objective: To equal the performance of the S&P 500 Index. Principal Investment Strategies: The Portfolio will normally invest most of its assets in common stocks included in the S&P 500 Index. The Portfolio also expects to invest, as a principal investment strategy, in securities index futures contracts and/or related options to simulate full investment in the S&P 500 Index while retaining liquidity to facilitate trading, to reduce transaction costs, or to seek higher return when these derivatives are priced more attractively than the underlying security. Also, since the Portfolio attempts to keep transaction costs low, the portfolio manager generally will rebalance the Portfolio only if it deviates from the S&P 500 Index by a certain percent. MetLife monitors the tracking performance of the Portfolio through examination of the ''correlation coefficient.'' A perfect correlation would produce a coefficient of 1.00. The Portfolio will attempt to maintain a target correlation coefficient of at least .95.

28. The following chart compares the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio. Neither the Initial Class shares of the Substituted Portfolio nor Class A shares of the Replacement Portfolio have adopted any plan pursuant to rule 12b–1 under the 1940 Act.

	Substituted portfolio (in percent)	Replacement portfolio (in percent)
	Index 500 Portfolio (Initial Class)	MetLife Stock Portfolio (Class A)
Advisory Fees	0.24	0.25
Other Expenses	0.09	0.06
Total Operating Expenses	0.33	0.31
Less Expense Waivers and Reimbursements	0.05	N/A
Net Operating Expenses	0.28	0.31

29. The following chart compares the fees paid for advisory and subadvisory services for the fiscal year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by the Substituted Portfolio and the Replacement Portfolio.

Substituted portfolio—Index 500 portfolio		Replacement portfolio—Metlife Stock Index portfolio (Class A)	
Annual advisory fees	Annual subadvisory fees (paid by the Adviser)	Annual advisory fees	Annual subadvisory fees (paid by the Adviser)
0.24%	DAMI 0.006% FMRC 0.12%	0.25%	At Cost.

30. By supplements dated March 5, 2003, to the May 1, 2002 prospectuses for the MetLife Investors Contracts and February 28, 2003 for May 1, 2000 prospectuses for the Security Equity Life Contracts and the private placement memoranda for the Security Equity Life PP Contracts and the Accounts, MetLife Investors USA and Security Equity Life notified owners of their Contracts of their intention to take the necessary actions, including seeking the orders requested by this application and obtaining approval from various groups of Contract owners (described below), to carry out the proposed substitutions as described herein.

31. The supplements about the proposed substitutions advised Contract owners that from the date of the supplement until the date of the proposed substitutions, MetLife Investors USA and Security Equity Life will not (except as described in the next section) exercise any rights reserved under any Contract to impose restrictions or additional restrictions on or charges for transfers until at least 30 days after the proposed substitutions. Similarly, the supplements disclosed that, from the date of the supplement until the date of the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners to make one transfer of Contract value out of the subaccount

currently holding shares of the Substituted Portfolio to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. The supplements also advised Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described immediately below) informing them of the fact and details of the substitutions.

32. Within five days after the proposed substitutions, any Contract owners who are affected by a substitution will be sent a written notice informing them that the substitutions were carried out. The notice also will reiterate the facts that MetLife Investors USA and Security Equity Life: (a) will not exercise any rights reserved by it under any of the Contracts to impose restrictions or additional restrictions on or charges for transfers until at least 30 days after the proposed substitutions, and (b) will, for at least 30 days following the proposed substitutions, permit such Contract owners to make one transfer of Contract value out of the subaccount holding shares of the Replacement Portfolio to another subaccount without the transfer being treated as one of a limited number of permitted transfers or a limited number of transfers permitted without a transfer charge. Current prospectuses for the Replacement Portfolio will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

33. In addition, as described below, MetLife Investors USA will solicit approval of the proposed substitutions from owners of MetLife Investors Contracts by mailing them information statements and voting forms. Likewise, Security Equity Life will solicit approval of the proposed substitutions from owners of Security Equity Life PP Contracts and Security Equity Life Contracts by mailing them information statements and voting forms.

34. MetLife Investors USA and Security Equity Life will effect the proposed substitutions following the issuance of the orders requested herein and the approval of the proposed substitutions by Contract owners (described below) as follows. As of the Effective Date, shares of the Substituted Portfolio will be redeemed in cash or in-kind by MetLife Investors USA and Security Equity Life. The proceeds of such redemptions will then be used to purchase shares of the Replacement Portfolio either by cash purchases or in-kind purchases, with each subaccount of the Accounts investing the proceeds of its redemption from the Substituted Portfolio in the Replacement Portfolio. All redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with rule 22c–1 under the 1940 Act.

35. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investments in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or MetLife Investors USA's or Security Equity Life's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including the costs of obtaining Contract owner approvals, brokerage commissions, legal, accounting, and other fees and expenses, will be paid by MetLife Investors USA or Security Equity Life. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not, of course, be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. MetLife Investors USA and Security Equity Life will not exercise any right either may have under the Contracts to impose restrictions or additional restrictions on or charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least thirty days following the proposed substitutions. One exception to this is that MetLife Investors USA and Security Equity Life may impose restrictions on transfers to prevent or limit ''market timing'' activities by Contract owners or agents of Contract owners.

36. Prior to the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the Substituted Portfolio subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, MetLife Investors USA and Security Equity Life will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of Replacement Portfolio subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. All Contract owners, even those who are ''market timers,'' may avail themselves of the ''free'' transfer privilege both before and after the proposed substitutions.

37. MetLife Investors USA and Security Equity Life are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

38. To the extent that the annualized expenses of the Replacement Portfolio exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, 0.28%, MetLife Investors USA and Security Equity Life will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account (or subaccount) expenses on the last day of such fiscal period, such that the amount of the Replacement Portfolio's expense ratio, together with those of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of 0.31% and the expense ratio of the separate account (or subaccount) for the 2002 fiscal year. In addition, for twenty-four months following the substitutions MetLife Investors USA and Security Equity Life will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions. (Here, the term ''Contract'' means all of the MetLife Investors Contracts, Security Equity Life PP Contracts, and Security Equity Life Contracts currently offering a subaccount or separate account investing in the Substituted Portfolio).

39. In accordance with the Contract provisions and/or prospectus disclosure for the MetLife Investors Contracts,

MetLife Investors USA will seek approval of the substitutions proposed for Separate Account A from MetLife Investors Contract owners. Such approval will be sought from the owners of each class of MetLife Investors Contracts voting as a separate group, and the substitutions will be carried out for each class of Contracts whose owners approve them. A class of Contracts refers to a Contract type distinguishable from other types by the product (marketing) designation and, in most cases, by its contract form as approved for sale in each jurisdiction. Contracts of the same class have the same features and charge structure.

Approval is obtained by the affirmative vote of a majority of the class' outstanding interests in the Substituted Portfolio subaccount of Separate Account A (measured by the dollar value of accumulation units or annuity unit reserves). MetLife Investors USA will solicit approval of MetLife Investors Contract owners by sending them written voting forms accompanied by a voting information statement and other disclosure documents in a manner consistent with applicable requirements of Regulation 14A under the Securities Exchange Act of 1934 (together, ''voting materials''). In particular, the relevant information statement will disclose, in substance, the information required by applicable items of Form N–14. Any beneficial financial interest that MetLife Investors USA may have in Separate Account A is immaterial in relation to the interests of Contract owners, and MetLife Investors USA will not cast any votes.

40. Security Equity Life will seek approval of the substitutions proposed for Separate Accounts 10 from Security Equity Life PP Contract owners and for Separate Account 13 from Security Equity Life Contract owners. Such approval will be sought from the owners of Security Equity Life Contracts and Security Equity Life PP Contracts, each voting as a separate group, and the substitutions will be carried out for each group of Contracts whose owners approve them. Approval is obtained by the affirmative vote of the lesser of: (a) a majority of the outstanding interests in either Separate Account 10 or the Substituted Portfolio subaccount of Separate Account 13 (measured by the dollar value of accumulation units), or (b) 67% of such outstanding interests voted, if votes received represent a majority of such interests. Security Equity Life will solicit approval of Security Equity Life PP Contract owners and Security Equity Life Contract owners by sending them written voting materials of the same type sent by MetLife Investors USA. Any beneficial financial interest that Security Equity Life may have in either Separate Account 10 of Separate Account 13 is immaterial in relation to the interests of Contract owners and Security Equity Life will not cast any votes.

41. Pursuant to rule 20a–1 under the Act, the voting materials for Separate Account A and Separate Account 13 will be filed with the Commission as proxy materials. Because Separate Account 10 is not a registered investment company, voting materials related to it will not be so filed, however, the voting materials will be substantially identical in all material respects to the voting materials for Separate Account 13. Applicants anticipate that voting materials will be sent to Contract owners on or about March 28, 2003. Unless extended by either MetLife Investors USA or by Security Equity Life, votes must be received by April 24, 2003 to be counted.

42. The replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to section 26(c) of the 1940 Act.

43. Although not identical, the investment objectives and principal investment strategies of the Replacement Portfolio are substantially the same as those of the Substituted Portfolio. The investment objective of the Substituted Portfolio is to seek investment results corresponding to the total return of common stocks publicly traded in the United States, as represented by the S&P 500 Index. The S&P 500 Index consists of 500 common stocks, most of which are listed on the New York Stock Exchange. The stocks included in the S&P 500 Index are issued by companies among those whose outstanding stock have the largest aggregate market value, although stocks that are not among the 500 largest are included in the S&P 500 Index for diversification purposes.

44. The Substituted Portfolio normally invests at least 80% of its assets in common stocks included in the S&P 500 Index. The Portfolio may not always hold all of the same securities as the S&P 500 Index. DAMI uses statistical sampling techniques to attempt to replicate the returns of the S&P 500 Index. Statistical sampling techniques attempt to match the investment characteristics of the S&P 500 Index and the Portfolio by taking into account such factors as capitalization, industry exposures, dividend yield, price/earnings ratio, price/book ratio, and earnings growth. The Portfolio may lend its securities to broker-dealers or other institutions to earn income. The Portfolio may also use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices or other factors that affect security values.

45. The investment objective of the Replacement Portfolio is to equal the performance of the S&P 500 Index. The Replacement Portfolio normally invests most of its assets in common stocks included in the S&P 500 Index. The Replacement Portfolio is managed by purchasing all of the common stocks in the S&P 500 Index. The Replacement Portfolio also expects to invest, as a principal investment strategy, in securities index futures contracts and/or related options to simulate full investments in the S&P 500 Index while, at the same time, retaining liquidity, facilitating trading, reducing transaction costs, or seeking higher returns when these derivatives are priced more attractively than the underlying indicies. Also, since the Replacement Portfolio attempts to keep transaction costs low, the Replacement Portfolio subadviser generally will rebalance the Replacement Portfolio only if it deviates from the S&P 500 Index by a certain percent. The Replacement Portfolio may lend its securities to broker-dealers or other institutions to earn income. MLIC monitors the tracking performance of the Replacement Portfolio using the ''correlation coefficient.'' A perfect correlation results in a coefficient of 1.00. The Replacement Portfolio will attempt to maintain a target correlation coefficient of at least 0.95.

46. The investment objectives of the two portfolios are virtually identical. Both portfolios seek to mirror the performance of the S&P 500 Index. Further, both portfolios' principal investment strategies are substantially the same in that both portfolios are managed by investing portfolio assets in the common stocks comprising the S&P 500 Index. Unlike the Replacement Portfolio, however, the Substituted Portfolio may not always hold all of the same securities as the S&P 500 Index. Further, although the Substituted Portfolio may use various techniques, such as buying and selling futures contracts, to increase or decrease its exposure to changing security prices, the Replacement Portfolio invests, as a principal investment strategy, in securities index futures contracts and/or related options when such derivatives are priced more attractively than the

underlying security or to simulate full investments in the S&P 500 Index—a strategy of potential benefit to Contract owners.

47. FMR currently serves as investment adviser for the Substituted Portfolio. Investment management decisions for the Substituted Portfolio are made by DAMI and FMRC in their capacity as subadvisers. The investment adviser for the Replacement Portfolio is MetLife Advisers. MLIC carries out the daily investment management decisions for the Replacement Portfolio in its capacity as subadviser.

48. Both the Replacement Portfolio and the Substituted Portfolio have assets of more than $2.4 billion as of December 31, 2002. The Substituted Portfolio's asset base, however, has declined from $5.5 billion as of December 31, 1999.

49. Since both portfolios hold a large percentage of its assets in the 500 securities of the S&P 500 Index in the same proportion as the index, the respective expense ratios of the portfolios are the primary cause of tracking error (*i.e.*, the difference between the performance of the Substituted Portfolio or the Replacement Portfolio and the performance of the S&P 500 Index). For each of the last five years, the Substituted Portfolio's investment adviser voluntarily reimbursed a portion of the Portfolio's operating expenses. In fact, FMR retains the ability to be repaid for these expense reimbursements in future years in the amount that expenses fall below the 0.28% limit prior to the end of a fiscal year. Through imposition of the expense caps described above following the proposed substitutions, Contract owners affected by the proposed substitutions will incur total Portfolio and subaccount expenses for two years that are no higher than the total Portfolio and subaccount expenses that they incurred in the fiscal year ended December 31, 2002.

50. The following table compares the respective asset levels, expense ratios, and performance data of the two portfolios, as well as performance data for the S&P 500 Index.

Portfolio	Asset levels (as of 12/31/02) (millions)	Expense ratios (for the year ended 12/31/02) (in percent)	Performance (for periods ending 12/31/02)
Index 500 Portfolio (Substituted Portfolio)	$2,497	0.28	• 1 Year: −22.25% • 5 Year: −0.84% • 10 Year: 9.04%
MetLife Stock Index Portfolio (Replacement Portfolio)	$2,840	0.31	• 1 Year: −22.10% • 5 Year: −00.66% • 10 Year: 09.15%
S&P 500 Index	N/A	N/A	• 1 Year: −22.09% • 5 Year: −00.58% • 10 Year: 09.34%

51. The Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

52. Because shares held by a separate account of an insurance company are owned by the insurance company, MetLife Investors USA, Security Equity Life and other life insurance company affiliates of MetLife Investors USA and Security Equity Life own of record all of the shares of the Replacement Portfolio. Therefore, Metropolitan Series and the Replacement Portfolio are arguably under the control of MetLife Investors USA and Security Equity Life (and its affiliates) notwithstanding the fact that Contract owners may be considered the beneficial owners of those shares held in the Accounts. If Metropolitan Series and the Replacement Portfolio are under MetLife Investors USA's and Security Equity Life's control, then any person controlling MetLife Investors USA and Security Equity Life, or any person under common control with MetLife Investors USA and Security Equity Life, is an affiliated person of Metropolitan Series and the Replacement Portfolio. Similarly, if Metropolitan Series and the Replacement Portfolio are under MetLife Investors USA's and Security Equity Life's control, then Metropolitan Series and the Replacement Portfolio are affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of any persons that control MetLife Investors USA and Security Equity Life or are under common control with MetLife Investors USA and Security Equity Life.

53. Regardless of whether or not MetLife Investors USA and Security Equity Life can be considered to control Metropolitan Series or the Replacement Portfolio, because MetLife Investors USA and Security Equity Life each own of record more than 5% of the shares of the Replacement Portfolio, each is an affiliated person of Metropolitan Series and of the Replacement Portfolio. Similarly, because more than 5% of the Replacement Portfolio's shares are owned by each of MetLife Investors USA and Security Equity Life, Metropolitan Series and the Replacement Portfolio are affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of affiliated persons of any person that controls MetLife Investors USA and Security Equity Life or is under common control with MetLife Investors USA and Security Equity Life. Likewise, because MetLife Investors USA and Security Equity Life may, from time to time, own of record more than 5% of the shares of the Substituted Portfolio, each may, from time to time, be an affiliated person of VIP Fund II and of the Substituted Portfolio. Similarly, VIP Fund II and the Substituted Portfolio are each affiliated persons of MetLife Investors USA and Security Equity Life and also are affiliated persons of affiliated persons of any person that controls MetLife Investors USA and Security Equity Life or is under common control with MetLife Investors USA and Security Equity Life.

54. The proposed substitutions by MetLife Investors USA and Security Equity Life which may entail the purchase of shares of the Replacement Portfolio with portfolio securities of the Substituted Portfolio, therefore also may entail the purchase of such securities by the Replacement Portfolio and/or the sale of such securities by the Substituted Portfolio, each acting as principal, to the other and therefore may be in contravention of section 17(a) of the 1940 Act. In addition, the

participation of MetLife Investors USA and Security Equity Life in such purchase or sale transactions could be viewed as entailing the purchase of such portfolio securities from the Substituted Portfolio and the sale of such portfolio securities to the Replacement Portfolio by MetLife Investors USA and Security Equity Life each acting as principal, and therefore may be in contravention of section 17(a) of the 1940 Act.

55. Any in-kind redemptions of Substituted Portfolio shares and purchases of Replacement Portfolio shares for purposes of the proposed substitutions will be effected in a manner consistent with the investment objective, principal investment strategies and other policies of the Substituted Portfolio and the Replacement Portfolio. Both the VIP Fund II and Metropolitan Series will agree on the terms of any in-kind redemption. If the two management companies cannot agree, the VIP Fund II will redeem Substituted Portfolio shares for cash. If the parties do agree, the Replacement Portfolio will receive an approximately proportionate amount of each of the Substituted Portfolio's holdings and cash at the time of the substitution, as determined by the investment adviser of the Substituted Portfolio. After the Replacement Portfolio receives these portfolio holdings, MetLife will review them and determine which holdings to retain for the Replacement Portfolio based on the overall context of the Portfolio's investment objective, principal investment strategies and other policies and consistent with its management of the Replacement Portfolio. The redemption of Substituted Portfolio shares in kind is intended to reduce the costs of the proposed substitutions.

56. MetLife Investors USA and Security Equity Life assert that the terms under which any in-kind redemptions and purchases will be effected are reasonable and fair and will not involve overreaching on the part of any person principally because the transactions will not cause Contract owner interests to be diluted and because the transactions will conform to all but two of the conditions in rule 17a–7. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not suffer any adverse tax consequences as a result of the Substitution. The fees and charges under the Contracts will not increase because of the Substitution.

57. Both the board of directors of Metropolitan Series and the board of trustees of VIP Fund II have adopted procedures, as required by rule 17a–7 under the Act, pursuant to which the Portfolios of each may purchase securities from or sell securities to their affiliates. MetLife Investors USA and Security Equity Life will carry out the proposed substitutions in conformity with all of the conditions of rule 17a–7 and Metropolitan Series' and VIP Fund II's procedures thereunder, except that: (1) the consideration paid for the securities being purchased or sold will not be entirely cash, and (2) the board of directors of Metropolitan Series and the board of trustees of VIP Fund II will not separately review each portfolio security purchased and sold.

58. Even though MetLife Investors USA and Security Equity Life may not rely on rule 17a–7, they believe that the rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. When the Commission first proposed and then adopted rule 17a–7, it noted that the purpose of the rule was to eliminate the filing and processing of applications ''in circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under section 17(b) could not be made'' by establishing ''conditions as to the availability of the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction.''

59. Applicants assert that where, as here, they or the relevant investment company would comply with most, but not all, of the conditions of the rule, the Commission should consider the extent to which the conditions that they propose to meet would protect investors under the circumstances of the particular proposed transaction and issue an order if compliance with those conditions would fully protect investors under such circumstances. The circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to the Substituted Portfolio and the Replaced Portfolio from overreaching that rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that rule in the ordinary course of their business. In particular, because of the circumstances surrounding the proposed substitutions, VIP Fund II and the Replaced Portfolio could not ''dump'' undesirable securities on Metropolitan Series or the Substituted Portfolio, or retain its desirable securities for itself. Because both Portfolios are ''index funds'' that seek to match the performance of the same stock market index, both Portfolios hold substantially the same portfolio securities, and the Substituted Portfolio would receive from the Replaced Portfolio a pro-rata share of such securities held by the latter, the Replaced Portfolio would not have the opportunity to ''dump'' undesirable securities on, or otherwise overreach, the Substituted Portfolio. Nor can MetLife Investors USA or Security Equity Life effect the proposed transactions at a price that is disadvantageous to either the Replaced Portfolio or the Substituted Portfolio. Although the transactions may not be entirely for cash and the boards (or directors or trustees) will not make the determinations required by paragraph (e)(3) of rule 17a–7, each will be effected based upon: (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of rule 17a–7, and (b) the net asset value per share of the Substituted Portfolio and the Replacement Portfolio valued in accordance with the procedures disclosed in the registration statement of each and as required by rule 22c–1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the transaction.

60. The prohibitions of section 17(a) of the 1940 Act were designed to protect overreaching of an investment company primarily by its long-standing or ''permanent'' affiliates (*e.g.*, investment advisers and principal underwriters or their corporate parents) not other investment companies managed by an independent party that are only occasionally affiliates when a single party owns 5% or more of each of their shares. Applicants assert that, in the context of the proposed substitutions, board review of a lengthy, non-discretionary list of portfolio securities would not increase protection of Contract owners, but would only serve to distract directors' and trustees' attention from more important matters.

61. Any in-kind redemptions and purchases will be carried out in a manner consistent with the policies of both the Substituted Portfolio and the Replacement Portfolio, as recited in their respective registration statements and in any reports by filed by either

with the Commission under the 1940 Act. Both the VIP Fund II, on behalf of the Substituted Portfolio, and Metropolitan Series, on behalf of the Replacement Portfolio, must agree on the terms of any in-kind redemption. If an agreement cannot be reached, the VIP Fund II will redeem Substituted Portfolio shares in cash.

62. The proposed substitutions, as described herein, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be provided by the Substituted Portfolio as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the in-kind purchases of Replacement Portfolio shares will be valued by the Replacement Portfolio at the values established by the Substituted Portfolio using its normal valuation procedures. Therefore, there will be no change in value to any Contract owner as a result of the Substitution. The Commission has granted relief to others based on similar facts.

63. Applicants submit that, for all of the reasons stated above, (a) the terms of the proposed in-kind redemptions and purchases of shares described above, including the consideration to be paid or received, are reasonable and fair to Contract owners and do not involve overreaching on the part of any person, (b) the proposed in-kind redemptions and purchases of shares described above are consistent with the policies of Metropolitan Series and the Replacement Portfolio, as well as VIP Fund II and the Substituted Portfolio, as recited in the registration statements (and 1940 Act reports filed with the Commission) of each, and (c) the proposed in-kind redemptions and purchases of shares described above are consistent with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8438 Filed 4–7–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25989; File No. 812–12905]

CUNA Mutual Life Insurance Company, et al.; Notice of Application

April 2, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

APPLICANTS: CUNA Mutual Life Insurance Company (the ''Company''), CUNA Mutual Life Variable Annuity Account (the ''Annuity Account''), and CUNA Mutual Variable Life Account (the ''Life Account'').

SUMMARY OF APPLICATION: Applicants request an order to permit the substitutions by the Company of Z Class shares of the Multi-Cap Growth Stock Fund (the ''Replacing Fund'') of the Ultra Series Fund (''Ultra Series'') for Initial Class shares of the MFS Emerging Growth Series (the ''Replaced Fund'') of the MFS Variable Insurance Trust (''MFS Trust'').

FILING DATE: The application was filed on November 22, 2002 and was amended and restated on March 28, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Margaret Gallardo-Cortez, Esq., Assistant Vice President and Associate General Counsel, CUNA Mutual Life Insurance Company, 5910 Mineral Point Road, Madison, WI 53701–0391. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: H. Yuna Peng, Attorney, at (202) 942–0676, or Lorna J. MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is a mutual life insurance company organized under Iowa law in 1879 and incorporated on June 21, 1882. The Company, first organized as a fraternal benefit society with the name ''Mutual Aid Society of the Evangelical Lutheran Synod of Iowa and Other States,'' changed its name to ''Lutheran Mutual Aid Society'' in 1911, and reorganized as a mutual life insurance company called ''Lutheran Mutual Life Insurance Company'' on January 1, 1938. On December 28, 1984, the Company changed its name to ''Century Life of America.'' On January 1, 1997, the Company changed its name to ''CUNA Mutual Life Insurance Company.'' As of December 31, 2002, the Company had assets in excess of $5 billion.

2. The Company conducts a conventional life insurance business within the context of the credit union system and is authorized to transact the business of life insurance, including annuities, in all states other than New York and in Puerto Rico. For purposes of the Act, the Company is the depositor and sponsor of each of the Accounts as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the Act. Each Account is registered with the Commission as a unit investment trust. Each Account is comprised of a number of subaccounts and each subaccount invests exclusively in one of the insurance dedicated mutual fund portfolios made available as investment vehicles underlying the Contracts.

4. The Annuity Account is divided into 11 subaccounts. The assets of the Annuity Account support variable annuity contracts and interests in the Account offered through such contracts have been registered under the Securities Act of 1933.

5. The Life Account is divided into 11 subaccounts. The assets of the Life

Account support variable life insurance contracts and interests in the Account offered through such contracts have been registered under the 1933 Act.

6. The MFS Trust is registered as an open-end management investment company under the Act and currently offers 15 separate investment portfolios (each, a ''Fund''), one of which would be involved in the proposed substitution. The MFS Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered such shares under the 1933 Act on Form N–1A. Massachusetts Financial Services Company (''MFS'') serves as the investment adviser to each Fund, including the Replaced Fund. MFS' principal offices are located at 500 Boylston Street, Boston, Massachusetts 02116.

7. Ultra Series is registered as an open-end management investment company under the Act and currently offers 10 separate investment portfolios, one of which would be involved in the proposed substitution. Ultra Series issues a separate series of shares of beneficial interest in connection with each portfolio (also a ''Fund''), and has registered such shares under the 1933 Act on Form N–1A. MEMBERS Capital Advisors, Inc. (''MCA'') is the investment adviser of each Fund, including the Replacing Fund. Under a unitary fee arrangement, MCA, at its own expense, also provides or arranges for the provision of substantially all other services required by Ultra Series through service agreements with affiliated and unaffiliated service providers. Such services include all administrative, accounting and legal services as well as the services of custodians, transfer agents and dividend disbursing agents. The Funds of Ultra Series do, however, pay their own auditor's fees, compensation to (and expenses of) trustees who are not interested persons, independent counsel fees, and extraordinary expenses.

8. The Company and CUNA Mutual Investment Corporation (''CMIC'') each own a one-half interest in MCA. MCA's principal offices are located at 5910 Mineral Point Road, Madison, Wisconsin 53701.

9. MCA manages the assets of various Funds of Ultra Series, including the Replacing Fund, using a ''manager of managers'' approach under which MCA may allocate some or all of a Fund's assets among one or more ''specialist'' subadvisers. MCA monitors the performance of each subadviser to the extent that it deems appropriate to achieve a Fund's investment objective, reallocates portfolio assets among its own portfolio management team and individual subadvisers, or recommends to the Ultra Series' board of trustees that particular subadvisers be employed or terminated for a Fund.

10. MCA and the Replacing Fund have entered into a subadvisory agreement with Wellington Management Company, LLP (''Wellington Management'') to provide portfolio management services pursuant to which Wellington Management selects the Replacing Fund's investments and places orders to buy and sell the Replacing Fund's investments. Wellington Management's principal offices are located at 75 State Street, Boston, Massachusetts, 02109.

11. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, throughout the insured's life, and for a substantial death benefit upon the death of the insured. Under each of the Contracts, the Company reserves the right to substitute shares of one Fund for shares of another, or of another investment portfolio, including a portfolio of a different management investment company.

12. For as long as a variable life insurance Contract remains in force or a variable annuity Contract has not yet been annuitized, a Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or to a fixed account. The Contracts do not limit the number of transfers of Contract value for any period of time or reserve to the Company the right to limit the number of transfers. The Company currently waives applicable fees for Contract value transfers; however, certain of the variable life insurance Contracts reserve to it the right to assess a charge of $20 for transfers in excess of four per Contract year and certain of the annuity Contracts reserve the right to it to assess a charge of $10 for transfers in excess of twelve per Contract year.

13. The proposed substitution is part of efforts by the Company to provide a portfolio selection within the Contracts that: (1) Better represents the designated asset class, (2) provides more stability in portfolio management, and (3) exhibits more consistency of periodic returns relative to representative markets.

14. In 1995, when the Company first selected the Replaced Fund as an investment option under inclusion in the Contracts, the Fund met its desire for a multi-capitalization investment option. In recent years, however, the Replaced Fund has, in the Company's view, become more oriented towards stocks of large-cap growth companies. Although this has been the result of a strategy of successfully identifying and holding as portfolio investments the securities of fast-growing companies and by focusing new purchases in larger companies, the portfolio composition and general orientation of the Replaced Fund has shifted and no longer fits the position in the investment option lineup for the Contracts desired by the Company. In contrast, MCA has recently retained Wellington Management as the Replacing Fund's subadviser in order to manage the Fund to fit this position in the lineup. In recent years, other accounts managed by Wellington Management in this style have generally invested between 20% and 35% of their total assets in small-cap and mid-cap growth stocks, thereby providing more consistent multi-cap exposure. In the Company's judgment, this portfolio orientation better represents the asset class mix of a portfolio originally intended for inclusion in the Contracts.

15. Over time, the Replaced Fund has experienced a series of portfolio manager changes followed by the assignment of several portfolio managers, each with management responsibility over a portion of the Replaced Fund's assets. In the Company's view, this led to a significant increase in the number of portfolio holdings and has correspondingly raised the portfolio turnover rate to over 231% for 2001. It also has resulted, at times, in concentrations of the Fund's investments in one or a few industries or sectors while other industries or sectors have been underrepresented.

16. The Company believes that it is important that Contract investment options perform generally in line with representative markets, particularly given the limited selection of subaccounts available under the Contracts. In the Company's judgment, the changes in portfolio management and investment style experienced by the Replaced Fund have resulted in erratic portfolio performance for the Replaced Fund and the Company has determined that the Fund has not performed in line with those representative markets considered by MCA as providing more diversified multi-cap exposure. In contrast, the Replacing Fund's subadviser's style of management appears to have a much more consistent record in this regard. Based on Wellington Management's three-year

history managing other accounts (mutual funds and other subadvisory clients) using this style and disciplines, the Company believes that the Fund, under Wellington Management's direction, will provide much more consistent performance than the Replaced Fund has provided. Applicants believe that replacing the Replaced Fund with the Replacing Fund will benefit Contract owners and improve the array of investment options available under the Contracts.

17. Replacing the Replaced Fund with the Replacing Fund is appropriate and in the best interests of Contract owners because the stated investment objectives and principal investment strategies of the Replacing Fund are substantially identical to those of the Replaced Fund so that Contract owners will have continuity in investment and risk expectations. In addition, the types of investment advisory and administrative services provided to the Replacing Fund are substantially the same as those provided to the Replaced Fund. Finally, Applicants note that the net expenses for the Replacing Fund were the same as those for the Replaced Fund for the year ended December 31, 2002.

18. The following chart sets out the investment objective and principal investment strategies of the Replaced Fund and the Replacing Fund, as stated in their respective prospectuses.

Replaced Fund	Replacing Fund
MFS Emerging Growth Series Investment Objective: Long term growth of capital. Principal Investment Strategies: The Fund invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, coinvertible securities and depositary receipts for those securities, of emerging growth companies. Emerging growth companies may be of any size, and the Fund's investments may include securities listed on a securities exchange or traded in over-the-counter (OTC) markets. MFS, the Fund's adviser, uses a bottom-up, as opposed to a top-down, investment style in managing the Fund. This means that securities are selected based upon fundamental analysis (such as an analysis of earnings, cash flows, competitive position and management's abilities) performed by the Fund's manager and MFS' large group of equity research analysts. While the Fund is a diversified fund and therefore spreads its investments across a number of issuers, it may invest a relatively large percentage of its assets in a single issuer as compared to other funds managed by MFS. The Fund may invest in foreign securities (including emerging market securities) The Fund has engaged and may engage in active and frequent trading to achieve its principal investment strategies.	Multi-Cap Growth Stock Fund Investment Objective: Long term capital appreciation. Principal Investment Strategies: The Fund invests generally in common stocks, securities convertible into common stocks and related equity securities. Under normal market conditions, the Fund will maintain at least 80% of its assets in these securities. The Fund seeks securities of growth companies across a broad range of market capitalization focusing on those with proprietary technologies, management, or market opportunities that are likely to support earnings growth over extended time periods in excess of the growth rate of the economy and/or the rate of inflation. The Fund may also invest in warrants, preferred stocks and debt securities (including non-investment grade debt securities). The Fund may invest up to 25% of its assets in foreign securities, including emerging market securities.

19. The following chart compares advisory fees, other expenses, total operating expenses (before and after any waivers and reimbursements), and portfolio turnover rates for the year ended December 31, 2002, expressed as an annual percentage of average daily net assets, of the Replaced Fund and the Replacing Fund. Neither the Initial Class shares of the Replaced Fund nor Z Class shares of the Replacing Fund are subject to a distribution plan or shareholder service plan adopted under Rule 12b–1 of the Act.

	Replaced Fund	Replacing Fund
	MFS Emerging Growth Series (Initial Class)	Multi-Cap Growth Stock Fund (Z Class)
Advisory Fees	0.75%	0.85%
Other Expenses	0.11	0.01
Total Operating Expenses	0.86%	0.86%
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	0.86%	0.86%
Portfolio Turnover	114.67%	156.51%

20. The Replaced Fund has an expense offset arrangement that reduces the Fund's custody fee based upon the amount of cash maintained by the Portfolio with its custodian and dividend disbursing agent. ''Other Expenses'' do not take into account these expense reductions, and are therefore higher than the actual expenses of the series. Had these fee reductions been taken into account, ''Net Expenses'' for the Replaced Fund would equal 0.85%.

21. The following chart compares the fees paid for advisory and subadvisory services for the fiscal year ending December 31, 2002, expressed as an annual percentage of average daily net assets, by the Replaced Fund and the Replacing Fund.

Replaced Fund		Replacing Fund	
MFS Emerging Growth Series (Initial Class)		Multi-Cap Growth Stock Fund (Z Class)	
Annual Advisory Fee	Annual Subadvisory Fee (paid by the Adviser)	Annual Unitary Management Fee	Annual Subadvisory Fee (paid by the Adviser)
0.75%	NA	0.85%	Wellington Management First $100M—0.50% Above $100M—0.40%

22. The following table compares the respective asset levels, expense ratios, and performance data of the two Funds for each of the past three fiscal years. Wellington Management has been the Replacing Fund's subadviser since May 1, 2002.

MFS Emerging Growth Fund	Net assets at end of period	Expense ratio	Total return
2000	$2,312,406,000	.85%	−19.61%
2001	1,462,000,000	.86	−33.49
2002	774,775,000	.85	−33.76
Multi-Cap Growth Fund			
2000	$9,897,000	.91%	−9.52%
2001	13,923,000	.86	−30.89
2002	75,326,000	.86	−25.21

23. Applicants believe that the Replacing Fund is an appropriate replacement for the Replaced Fund for each Contract. The Replacing Fund has a substantially identical investment objective as that of the Replaced Fund. Both pursue their investment objective by investing primarily in companies, of various sizes, which are expected to grow faster than the general economy. The investment adviser for the Replaced Fund and the subadviser for the Replacing Fund both rely on internal research and use a ''bottom-up'' stock selection approach to portfolio management (as opposed to a ''top-down,'' economic forecasting oriented approach). There are, however, some distinctions between the way in which the principal investment strategies are pursued by the Replaced Fund and the Replacing Fund.

24. The primary differences in the implementation of investment strategies of the Replaced Fund and the Replacing Fund manifest in the degree of flexibility exercised by their adviser or subadviser in implementing the strategies. For example, whereas the Replaced Fund's investment adviser employs no firm guidelines limiting the size of its capitalization exposures, the Replacing Fund's subadviser typically limits large-cap exposure to a range of 60%–90% of total assets, mid-cap exposure to 25% or less of total assets, and small-cap exposure to 20% or less of total assets. Similarly, the Replaced Fund's adviser does not limit its exposure to any single industry; in contrast, the Replacing Fund's subadviser generally limits its industry exposure to no more than 15 percentage points in excess of that industry's weight in the Fund's benchmark index. Moreover, the Replaced Fund has often concentrated its portfolio in relatively few large holdings, with some exceeding 10% of total assets, while much of the rest of its portfolio is often scattered over a few hundred very small holdings. In contrast, the Replacing Fund's subadviser has generally managed other accounts with the same style as the Replacing Fund with few holdings representing more than 5% of the Fund's total assets and fewer than 110 holdings overall. Finally, the annual portfolio turnover rate for the Replaced Fund has ranged from 114% to 231% over the last three years as it has tried to respond to current market conditions. In contrast, other accounts managed by the Replacing Fund's subadviser with the same style as the Replacing Fund have experienced annual turnover rates ranging from 90% to 140% during the past three years. The Company believes that this likely is a reflection of Wellington Management's longer-term perspective on the stocks it has purchased. In addition, the Replacing Fund has available to it transactional advantages attributable to achieved economies of scale comparable to that of the Replaced Fund's manager and has the same expense ratio as the Replaced Fund.

25. To the extent that the annualized ratio of expenses to average net assets of the Replacing Fund exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, 0.85%, the Company will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account expenses (or subaccount) expenses on the last day of such fiscal period, such that the ratio of the Replacing Fund's expenses to average net assets, together with the ratio of expenses to average net assets of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of 0.85% and the ratio of expenses to average net assets of the separate account (or subaccount) for the fiscal year ended December 31, 2002. In addition, for twenty-four months following the substitutions, the Company will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

26. By supplements to the May 1, 2002 prospectuses for the Contracts and the Accounts (substantially in the form attached as Exhibit C to the initial application), the Company will notify owners of the Contracts of their intention to take the necessary actions, including seeking the order requested

by this application, to carry out the proposed substitution as described herein.

27. The supplements about the proposed substitution will advise Contract owners that from the date of the supplement until the date of the proposed substitution, the Company will not (except as described in the next section) suspend its current waivers of transfer charges or exercise any rights reserved by it under any Contract to impose additional charges for transfers until at least 30 days after the proposed substitution. Similarly, the supplements will disclose that, from the date of the supplement until the date of the proposed substitution, the Company will permit Contract owners to make one transfer of Contract value out of the subaccount currently holding shares of the Replaced Fund to another subaccount without the transfer being treated as one of a limited number of transfers permitted without a transfer charge. The supplements also will advise Contract owners that if the proposed substitution is carried out, then each Contract owner affected by the substitution will be sent a written notice (described immediately below) informing them of the fact and details of the substitution.

28. Within five days after the proposed substitution, any Contract owners who are affected by the substitution will be sent a written notice informing them that the substitution was carried out. Current prospectuses for the Replacing Fund will be sent to Contract owners on or before the time the notices are sent. The notice as delivered in certain jurisdictions also may explain that, under insurance regulations in those jurisdictions, Contract owners affected by the substitutions may exchange their Contract for a fixed-benefit life insurance contract or fixed-benefit annuity contract during the 60 days following the substitutions.

29. The Company will carry out the proposed substitutions by redeeming Initial Class shares of the Replaced Fund held by the Accounts for cash and applying the proceeds to the purchase of Z Class shares of the Replacing Fund. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Company's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by the Company. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

30. The proposed substitution will not be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining ''free'' transfers or exchanges in a Contract year. The Company will not exercise any right it may have under the Contracts to impose charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least 30 days following the proposed substitutions. Similarly, the Company will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the Replaced Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, the Company will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of Replacing Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge.

31. The Company is also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

32. The proposed substitution appears to involve the substitution of securities within the meaning of section 26(c) of the Act. Applicants therefore request orders from the Commission pursuant to section 26(c) approving the proposed substitution.

33. All the Contracts expressly reserve for the Company the right, subject to compliance with applicable law, to substitute shares of one fund or portfolio held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. The Company has reserved this right of substitution both to protect itself and its Contract owners in situations where it believes a fund is no longer appropriate for Contract owners or where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

34. Applicants maintain that Contract owners will be better served by the proposed substitution and that the proposed substitution is appropriate given the Funds and other investment options available under the various Contracts. Since its inception, the Replacing Fund has had investment performance superior to that of the Replaced Fund. More significantly, the Replacing Fund has had substantially similar levels of expenses over this same period (substantially identical for each of the past two years) as the Replaced Fund. Applicants believe that the Replacing Fund and Replaced Funds are substantially the same in their stated investment objectives and principal investment strategies as to afford investors continuity of investment experience, relative to management style. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

35. Although the Replaced Fund has substantially more assets than the Replacing Fund, the Replaced Fund's assets have declined significantly in recent periods. Although the Replaced Fund benefits from an expense offset arrangement that reduces the Fund's custody fees and thus has the effect, along with other arrangements to reduce expenses, of reducing the Replaced Fund's expenses to slightly lower than those of the Replacing Fund, there is no assurance that this expense reduction will continue. Because of the expense limits on the Contracts discussed above, for two years following the proposed substitution, Contract owners affected by the proposed substitution will benefit from a subaccount and underlying Fund with aggregate expenses that are no higher than the aggregate annualized expenses of the subaccount and the Replaced Fund for the fiscal year ended December 31, 2002.

36. Applicants believe that Contract owners will be at least as well off with the Replacing Fund as with the Replaced Fund. The proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitution is carried out, all Contract owners will be permitted to

allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

37. The proposed substitution is not the type of substitution that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which section 26(c) was designed to prevent.

38. The proposed substitution also is unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the size, financial condition, type and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

39. Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion:

Applicants assert that, for the reasons stated above, the requested order approving the Substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47613; File No. SR–Amex–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its initial listing guidelines in Commentary .01 and .05(d)(ii) to Amex rule 915 to allow options to be listed on ''covered securities,'' when, among other things, the trading price of the underlying security was at least $3 for the five business days prior to certification with The Options Clearing Corporation (''OCC''). The text of the proposed rule change follows. Additions are in italics. Deleted text is in [brackets].

* * * * *

Rule 915. Criteria for Underlying Securities

(a) No Change
(b) No Change

Commentaries

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3 or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No Change
2. No Change
3. No Change
4. *(a) If the underlying security is a ''Covered Security'' as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or*

(b) If the underlying security is not a ''Covered Security,'' [E]*e*ither (i) the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or (ii) (a) the underlying security meets the guidelines for continued listing in rule 916; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.

5. No Change

.02–.04 No Change

.05 (a)–(c) No Change

(d) In the case of a restructuring transaction that satisfies either or both of the conditions of subparagraph (a) above in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution;

(i) No Change

(ii) the Exchange may certify that the market price of the Restructured Security satisfies guideline 4 of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the Restructured Security has traded ''regular way'' on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructured Security was at least $7.50, *or if the Restructured Security is a ''Covered Security,'' as defined in Commentary .01(4) to rule 915, the market price of the Restructured Security was at least $3.00;* and

(iii) No Change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

.06–.09 No Change
* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its pricing requirement for underlying securities. Currently, Commentary .01(4) to Amex rule 915 provides that either (i) the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection or (ii) the underlying security meets the guidelines for continued listing in Amex rule 916, options on such underlying security are traded on at least one other registered national securities exchange and the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts.

The Exchange now proposes to amend Commentary .01(4) to Amex rule 915 to provide that, for underlying securities that are ''Covered Securities,'' as defined under section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act''),[3] the closing market price of the underlying security must be at least $3 per share for the five previous consecutive business days prior to the date on which the Amex submits an option class certification to OCC.[4] Underlying securities that are not ''Covered Securities'' will continue to be subject to the Exchange's current $ 7.50 price per share requirement found in Commentary .01 to Amex rule 915.[5]

The proposed rule change is identical to a proposal by the Chicago Board Options Exchange, Inc. (''CBOE'') to revise its initial listing standards that was recently approved by the Commission and became effective on January 15, 2003.[6] In addition, the International Securities Exchange, Inc. (''ISE'') has also proposed to match the CBOE amendment to options initial listing standards.[7] The Exchange seeks to amend its initial options listing guidelines in order to be consistent with both the CBOE and ISE so that the Amex is not placed at a competitive disadvantage with respect to the option classes that it may list. The Exchange further does not believe that this particular options initial listing guideline serves to accomplish its intended purpose of preventing the proliferation of option classes on overlying securities that lack adequate liquidity to maintain fair and orderly markets.

The Exchange believes that changing the initial price guideline to the proposed $3 market price per share for ''covered securities'' would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection based on the economic realities of its customers and the marketplace. In determining to list new option classes, the Exchange also must ensure that its own systems and those of the Options Price Reporting Authority (''OPRA'') have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed $3 market price per share standard is also consistent with the guideline price in Exchange rule 916 for determining whether an underlying security previously approved for Exchange options transactions can continue to underlie options trading.[8] Commentary .01(4) and .02 to Amex rule 916 sets a $3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under rule 915. Accordingly, the Exchange believes that the proposed $3 market price per share for ''covered securities'' should also be the threshold standard for the initial listing as well.

Consistent with both the CBOE and ISE proposals, the Exchange, as a safeguard against price manipulation, has proposed that the underlying security have a closing market price of at least $3 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to OCC for listing and trading. The Exchange believes that the proposed ''look back'' period of five consecutive trading days provides a sufficient measure of protection from attempts to manipulate the market price of the underlying security. The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's quarterly delisting program,[9] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within Amex rules, the Exchange proposes to also amend Commentary .04(d)(ii) to Amex rule 915 in connection with Restructured Securities. Commentary .04(d)(ii) to Amex rule 915 currently provides a method to certify that the market price of a Restructured Security satisfies the pricing requirement of Commentary .01(4) to Amex rule 915 referencing the $7.50 market price per share requirement. In order to make Commentary .04(d)(ii) Amex rule 915 consistent with the pricing guideline change to Commentary .01(4) of Amex rule 915, the amended rule reflects the reduction of the market price from $7.50 to $3 as long as the Restructured Security is a ''Covered Security.''

[3] Section 18(b)(1)(A) of the 1933 Act provides that, ''[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *.'' *See* 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Commentary .01(4) to Amex rule 915 would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. *See* 15 U.S.C. 77r(b)(1)(B).

[4] For purposes of this proposal, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded. *See* amended Commentary .01(4) to Amex rule 915.

[5] The Exchange is not seeking to amend any of the other initial listing guidelines set forth in Commentary .01 to Amex rule 915.

[6] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

[7] *See* Securities Exchange Act Release No. 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003).

[8] *See* Commentary .01(4) and .02 of Amex rule 916.

[9] The Exchange states that it currently reviews multiply listed option classes, on a quarterly basis, for the purpose of delisting such option classes due to a lack of trading interest. Going forward, the Exchange intends to implement an active delisting program which would require the quarterly delisting of multiply listed option classes that do not trade more than twenty (20) contracts per day on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) [10] of the Act in general and furthers the objectives of section 6(b)(5) [11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of rule 19b–4 [13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under rule 19b–4(f)(6)(iii) of the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.[15] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,[16] and, therefore, the proposal is effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–19 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8446 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62). *See also* Securities Exchange Act Release Nos. 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (Notice of Filing and Immediate Effectiveness of SR–PCX–2003–06); and 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR–ISE–2003–04).

[16] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47609; File No. SR–MSRB–2002–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G–37, on Political Contributions and Prohibitions on Municipal Securities Business, G–8, on Books and Records, Revisions to Form G–37/G–38 and the Withdrawal of Certain Rule G–37 Questions and Answers

April 1, 2003.

On September 26, 2002, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–12), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), and rule 19b–4 thereunder.[1] The proposed rule change is described in items I, II, and III below, which Items have been prepared by the Board. On March 26, 2003, the MSRB filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith amendments to rules G–37, on political contributions and prohibitions on municipal securities business, G–8, on books and records, revisions to Form G–37/G–38 and the withdrawal of certain Rule G–37 Questions and Answers . The cumulative amendments made to rules G–37 and G–8, the revisions to Form G–37/G–38 and the withdrawal of certain Rule G–37 Questions and Answers as set forth in the original filing and by Amendment No. 1 are collectively referred to herein as the ''Proposed Rule

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

Change.'' The Proposed Rule Change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. Below is the text of the Proposed Rule Change. Additions are italicized; deletions are bracketed.

Rule G–37. Political Contributions and Prohibitions on Municipal Securities Business

(a) No change.

(b)(*i*) No broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) The broker, dealer or municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional; provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of $250 by any municipal finance professional to each official of such issuer, per election.

(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.

(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraphs (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the six months prior to the individual becoming a municipal finance professional.

(c) through (d) No change.

(e)(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, two copies of Form G–37/G–38 setting forth, in the prescribed format, the following information:

(A)–(C) No change.

(D) any information required to be disclosed pursuant to section (e) of rule G–38; [and]

(E) such other identifying information required by Form G–37/G–38[.] *; and*

(F) whether any contribution listed in this paragraph (e)(i) is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G–37/G–38 received from any broker, dealer or municipal securities dealer.

(ii) through (iii) No change.

(f) No change.

(g) Definitions. (i) through (iii) No change.

(iv) The term ''municipal finance professional'' means: (A) Any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i)*, provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A)*; (B) any associated person who solicits municipal securities business, as defined in paragraph (vii); (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or (E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G–1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person designated by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G–8(a)(xvi) is deemed to be a municipal finance professional. Each person designated a municipal finance professional shall retain this designation for [two] *one* year[s] after the last activity or position which gave rise to the designation.

(v) through (viii) No change.

(h) No change.

(i) A registered securities association with respect to a broker, dealer or municipal securities dealer who is a member of such association, or the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer, upon application, may exempt, conditionally or unconditionally, a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors [whether]:

(i) *whether* such exemption is consistent with the public interest, the protection of investors and the purposes of this rule; [and]

(ii) *whether* such broker, dealer or municipal securities dealer

(A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule;

(B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s);

(C) has taken all available steps to cause the [person or persons] *contributor* involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and

(D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances[.], *and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the broker, dealer or municipal securities dealer;*

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or

otherwise an employee of the broker, dealer or municipal securities dealer, or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g., federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) Automatic Exemptions.

(i) A broker, dealer or municipal securities dealer that is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (1) The broker, dealer or municipal securities dealer must have discovered the contribution which resulted in the prohibition on business within four months of the date of such contribution; (2) such contribution must not have exceeded $250; and (3) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the broker, dealer or municipal securities dealer.

(ii) A broker, dealer or municipal securities dealer is entitled to no more than two automatic exemptions per 12-month period.

(iii) A broker, dealer or municipal securities dealer may not execute more than one automatic exemption relating to contributions by the same municipal finance professional regardless of the time period.

* * * * *

Rule G–8: Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xv) No change.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G–37.*

Records reflecting:

(A)–(D) No change.

(E) the contributions, direct or indirect, to officials of an issuer and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer [(or controlled by any municipal finance professional of such broker, dealer or municipal securities dealer)] for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) The identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of an issuer made by each municipal finance professional, *any political action committee controlled by a municipal finance professional,* and non-MFP executive officer for the current year [and separate listings for each of the previous two calendar years], which records shall include: (i) The names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, [and] (iii) the amounts and dates of such contributions, *and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G–37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution;* provided, however, that such records need not reflect any contributions made by a municipal finance professional or non-MFP executive officer to officials of an issuer for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of an issuer, per election[; and]. *In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule G–37(g)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule G–37(g)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers; and*

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, *any political action committee controlled by a municipal finance professional,* and non-MFP executive officers for the current year [and separate listings for each of the previous two calendar years], which records shall include: (i) The names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such payments, and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. *In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (A) and (B) of rule G–37(g)(iv) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for those individuals meeting the definition of municipal finance professional pursuant to subparagraphs (C), (D) and (E) of rule G–37(g)(iv) and for any political action committee controlled by such individuals and for any non-MFP executive officers.*

(H)–(K) No change.

* * * * *

Form G–37/G–38

Name of dealer: _____

Report period: _____

I. CONTRIBUTIONS MADE TO ISSUER OFFICIALS

[List by state]

State	Complete name, title (including) any city/county/state or other political subdivision) of issuer official.	Contributions by each contributor category (*i.e.*, dealer, dealer controlled PAC, municipal finance professional controlled PAC, municipal finance professionals and executive officers). For each contribution, list contribution amount and contributor category (for example, ($500 contribution by non-MFP executive officer). *If any contribution is the subject of an automatic exemption pursuant to Rule G–37 (j), list amount of contribution and date of such automatic exemption.*

II. Payments Made to Political Parties of States or Political Subdivisions (List by State)

No change.

III. Issuers With Which Dealer Has Engaged in Municipal Securities Business (List by State)

No change.

IV. Consultants

No change.

* * * * *

Rule G–37 Questions & Answers To Be Withdrawn

May 24, 1994 (Q&A #12)

[Q: A dealer may discover that a ''disgruntled'' municipal finance professional made a contribution to an issuer official deliberately to prohibit the dealer from engaging in municipal securities business with the issuer. Is there a procedure in place whereby the dealer can seek an exemption from the prohibition on municipal securities business in such circumstances?]

[A: The Board recognizes that there may be limited circumstances in which a dealer should be able to request an exemption from the prohibition on business. Thus, the Board has filed with the SEC an amendment to rule G–37 that allows bank regulatory authorities (the Office of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Corporation), upon application by a dealer, to grant such exemption, conditionally or unconditionally, in certain circumstances. See the rule filing, SR–MSRB–94–5, for more information about this procedure.]

June 15, 1995 (Q&A #4)

[Q: Rule G–37(i) provides a procedure whereby dealers may request that the NASD or the appropriate regulatory agency (*i.e.,* federal bank regulatory authorities) grant an exemption from the rule's two-year ban on municipal securities business with an issuer which resulted from political contributions made to officials of that issuer by the dealer, a PAC controlled by the dealer, or a municipal finance professional. If a municipal finance professional made a contribution to an issuer official which triggered the ban, what factors would be relevant to the dealer's decision to request an exemption from that ban, and to the NASD or appropriate regulatory agency in determining whether the exemption should be granted?]

[A: In determining whether to grant such an exemption, rule G–37(i) requires the NASD or the appropriate regulatory agency to consider, among other factors, whether (i) such exemption is consistent with the public interest, the protection of investors and the purposes of rule G–37; and (ii) such dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with the rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the person or persons involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures as may be appropriate under the circumstances.

In reviewing the facts and circumstances presented by the dealer, as well as the factors set forth above, the NASD or the appropriate regulatory agency will consider whether, prior to the time the contribution was made, the dealer had developed and instituted procedures reasonably designed to ensure compliance with the rule. Such procedures are required by rule G–27 on supervision. Effective compliance procedures are essential because rule G–37 requires the dealer to have information regarding each contribution made by the dealer, dealer-controlled PACs and municipal finance professionals so that the dealer can determine where and with whom it may or may not engage in municipal securities business. In addition, for disclosure purposes, the dealer must maintain information on executive officers' contributions and payments to political parties, as well as consultant hiring practices. Moreover, because of the ''directly and indirectly'' provision in rule G–37(d), as well as the no solicitation and no bundling provisions in section (c) of the rule, the dealer must ensure that those persons and entities subject to the rule are not causing the dealer to be in violation thereof. In this regard, the Board wishes to remind dealers that they are responsible for determining which of their employees, supervisors (*e.g.*, branch managers), and management personnel (*e.g.*, members of the dealer's executive or management committee or similarly situated officials) are ''municipal finance professionals.'' In addition to those persons and entities covered by the rule, the dealer must ensure that other persons and entities hired to assist in municipal securities activities (*e.g.*, consultants) are not being directed to make contributions, or otherwise being used as conduits, in violation of the rule. In reviewing a request for exemption, the NASD or the appropriate regulatory agency also will consider whether the dealer has taken all available steps to obtain a return of the contribution. The return of the contribution, while important, is only one of the factors to be considered, and is not dispositive of whether an exemption should be granted.

Finally, the NASD or appropriate regulatory agency will consider whether the dealer has taken remedial or preventive measures as may be appropriate under the circumstances. Thus, dealers should provide information on any changes to compliance procedures and/or personnel action taken to address the particular situation which resulted in the prohibition so that such problems do not recur. For additional guidance on the exemption provision, please refer to Q&A number 2 in the August 1994 issue of *MSRB Reports* (Vol. 14, No. 4).

The Board previously provided two examples in which exemptions may be appropriate. The first example described a situation in which a disgruntled municipal finance professional made a contribution purposely to injure the

dealer, its management or employees. The second example involved a municipal finance professional who was eligible to vote for a particular issuer official and who made a number of small contributions during an election cycle (*e.g.*, over four years) which, when consolidated, amounted to slightly over the $250 *de minimis* exemption (*e.g.*, $255).

The Board believes that the following situations are not sufficient to justify the granting of an exemption from a ban on business: (1) A contribution was made by a municipal finance professional which subjected the dealer to the two-year ban on business, but the municipal finance professional was not aware of rule G–37 or any of its particular provisions; (2) the dealer or a municipal finance professional did not know that the recipient of a particular contribution was an ''official of an issuer''; and (3) at the time the contribution was made, an associated person did not know that he was a ''municipal finance professional'' by virtue of his supervisory capacity, by being primarily engaged in municipal securities representative activities, or by virtue of any of the other activities listed in the rule's definition of municipal finance professional.

The Board is strongly of the view that exemptions should be granted only in limited circumstances. If a significant number of exemptions are granted by the regulatory agencies, then the Board may reexamine the propriety of the exemption provision.]

June 29, 1998 (Q&A #1 (partial withdrawal), 2 and 3)

1. Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G–37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer.

The Board notes, however, that rule G–37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G–37. [Thus, the Board believes that it would be appropriate for the NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) to grant conditional or unconditional exemptions from bans on municipal securities business arising from such mergers if the NASD or the appropriate regulatory agency determines that, pursuant to rule G–37(i), the exemption is consistent with the public interest, the protection of investors and the purposes of the rule, as well as any other factors set forth in the rule or any other factors deemed relevant by the NASD or the appropriate regulatory agency.]

[2. Q: The Board has previously provided two examples in which exemptions from a ban on municipal securities business may be appropriate under rule G–37(i). Are these the only situations in which the NASD or the appropriate regulatory agency may provide an exemption under rule G–37(i)?]

[A: No. The two examples noted in Q&A number 4 (June 15, 1995), *MSRB Reports,* Vol. 15, No. 2 (July 1995) at 3–4, *MSRB Manual* (CCH) & 3681, were not meant to be the only instances in which exemptions might appropriately be given. Because of the varying factual situations that arise with each exemptive request, the Board believes that the NASD and the appropriate regulatory agencies should review such other factual situations presented by dealers in exemptive requests pursuant to the requirements in rule G–37(i) and, based on the facts, either approve or reject the request. Rule G–37(i) allows the NASD and the appropriate regulatory agencies to grant exemptions from the ban on business ''conditionally or unconditionally'' and, if the NASD or the appropriate regulatory agency believes it would be appropriate to shorten the ban on business or limit its scope, it is authorized to do so as long as the requirements of rule G–37(i) are met.]

[3. Q: The Board has previously described three situations which it believes are not sufficient to justify the granting of an exemption from a ban on municipal securities business under rule G–37(i). Does this mean that the NASD or the appropriate regulatory agency may never provide an exemption under rule G–37(i) if any of these situations exist?]

[A: No. The Board's intent in describing these three scenarios in Q&A number 4 (June 15, 1995), *MSRB Reports,* Vol. 15, No. 2 (July 1995) at 3–4, *MSRB Manual* (CCH) & 3681, was to note that none of these situations was sufficient, in and of itself, to justify the granting of an exemption from a ban on municipal securities business. However, any such scenario in combination with other facts and circumstances deemed relevant by the NASD or the appropriate regulatory agency (including, but not limited to, the factors set forth in rule G–37(i)) could, in the judgment of the NASD or the appropriate regulatory agency, be sufficient to justify a conditional or unconditional exemption from the ban.

The Board also notes that none of the three situations previously cited as insufficient to justify an exemption involved a contribution made prior to an individual becoming a municipal finance professional. Thus, for example, where a non-*de minimis* contribution was made by a person who later becomes a municipal finance professional (whether by reason of a merger, as a newly hired associated person, as an existing associated person becoming involved in municipal securities activities, or otherwise), neither the NASD nor any appropriate regulatory agency is constrained from granting a conditional or unconditional exemption if, in its judgment, such exemption is consistent with rule G–37(i).]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–37, on political contributions and prohibitions on municipal securities business, became effective on April 25, 1994. During the past eight years, the MSRB believes that the rule has been successful in halting pay-to-play practices in the municipal securities market. As part of the MSRB's

Long-Range Plan, the MSRB determined to conduct a review of the rule's requirements and seek comments on whether there are compliance concerns to address. Although the MSRB is sensitive to the burden imposed on brokers, dealers and municipal securities dealers (''dealers'') by the requirements of rule G–37 and is committed to reducing this burden whenever possible, the MSRB believes that the rule has provided substantial benefits to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

Background

Rule G–37 prohibits a dealer from engaging in municipal securities business [2] with an issuer within two years after certain contributions to an official of such issuer made by the dealer, any municipal finance professional (''MFP'') associated with such dealer (other than certain *de minimis* contributions) [3] or any political action committee (''PAC'') controlled by the dealer or any MFP. In addition, the rule requires dealers to disclose on Form G–37/G–38 certain contributions to issuer officials and payments to political parties of states and political subdivisions made by MFPs and certain other categories of contributors. Rule G–8, on books and records, requires dealers to create records of such contributions and payments. Finally, rule G–37(i) provides a procedure whereby dealers may request that NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) grant an exemption from rule G–37's two-year ban on municipal securities business with an issuer that resulted from political contributions made to officials of that issuer.

Review of Proposed Rule Change

Exemption Process and Withdrawal of Certain Rule G–37 Questions and Answers

As noted above, under rule G–37(i), a dealer that has triggered the rule's two-year ban on municipal securities business may seek an exemption from that ban from the appropriate regulatory agency.[4] The rule provides that the appropriate regulatory agency may exempt, ''conditionally or unconditionally,'' a dealer that is banned from engaging in municipal securities business with an issuer from such ban. The MSRB specifically intended that the regulatory agencies have flexibility in dealing with the various factual situations that may arise pursuant to exemption requests. For example, a regulatory agency could reduce the ban on business from two years to a lesser period of time. In determining whether to grant an exemption request, the appropriate regulatory agency is required to consider, among other factors, whether an exemption would be consistent with the public interest, the protection of investors and the purposes of rule G–37. The regulatory agency also is required to examine whether the dealer had appropriate procedures in place to ensure compliance with the rule, had no actual knowledge that the contribution was being made, has taken all steps to obtain a return of the contribution, and has taken any other appropriate remedial or preventive measures.

The Proposed Rule Change includes the addition of the following relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption (conditional or unconditional) from the two-year ban on business:

- The nature of remedial or preventive measures directed specifically toward the contributor and all employees of the dealer.
- Whether, at the time of the contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment.
- The timing and amount of the contribution.
- The nature of the election (*e.g.*, federal, state or local).
- The contributor's apparent intent or motive in making the contribution, as evidenced by the facts and circumstances surrounding such contribution.

The additional factors will help to clarify facts and circumstances relevant to exemptive requests and will facilitate the review of such requests by the appropriate regulatory agency. To further clarify and facilitate this process, the MSRB also is withdrawing certain rule G–37 Questions and Answers (''Qs and As'') previously published concerning when an exemption may or may not be appropriate. This action is necessary in order to clarify that the regulatory agencies have discretion in administering the exemption process. The Proposed Rule Change will assist the regulatory agencies in exercising their discretion in a manner that will fulfill the purposes of rule G–37.

Adoption of an Automatic Exemption Provision

The Proposed Rule Change provides for an automatic exemption from a dealer's ban on business in certain limited instances. This provision sets out procedures that would permit dealers to execute two such exemptions per 12-month period for contributions made by an MFP of $250 or less if the dealer discovers the contribution within four months of the date of such contribution and the contributor obtains a return of the contribution within 60 calendar days of the date of discovery of such contribution by the dealer. A dealer would not be permitted to execute more than one automatic exemption relating to contributions by the same MFP. The automatic exemption would not be available for contributions made by a dealer, a dealer-controlled PAC or MFP-controlled PAC. Finally, dealers would be required to report the exemption on Form G–37/G–38 and to maintain records of such exemptions pursuant to rule G–8, on books and records. A dealer would be banned from municipal securities business until the contribution was returned.

The MSRB believes that a limited automatic exemption provision will provide a measure of relief to the industry without compromising the purposes of rule G–37. In addition, it will relieve some of the regulatory agencies' burden of administering the exemption process by removing from this process certain routine cases involving small contributions. The MSRB notes that the time periods proposed are reasonable and will encourage dealers to discover contributions that could give rise to a ban on business in a timely manner (*e.g.*, in preparation for the filing of quarterly forms G–37/G–38) and to seek quick refunds of these contributions. The automatic exemption will, for example, allow dealers who wish to hire as an MFP someone who previously gave a small contribution to an issuer official to lift the ban on business with that issuer after meeting the requirements of the new provision.

[2] Municipal securities business is defined in rule G–37 to encompass certain activities of dealers in connection with primary offerings of municipal securities, such as acting as underwriter in a negotiated sale, as placement agent, or as financial advisor, consultant or remarking agent to an issuer in which the dealer was chosen on a negotiated basis.

[3] Contributions made by an issuer for whom the MFP is entitled to vote will not cause the MFP's dealer to be prohibited from engaging in municipal securities business with issuer if the contributions, in total, are not in excess of $250 by such MFP to each official of such issuer, per election.

[4] The appropriate regulatory agencies include NASD for securities firms and the federal bank regulators for bank dealers.

Also, a dealer could lift the ban on business if an MFP contributes to an issuer official for whom he or she is not entitled to vote without knowing that his or her firm does business with that issuer. The MSRB determined to limit the number of exemptions, as well as the dollar amount involved, to ensure that the automatic exemption provision could only be used in limited circumstances and not as an avenue for circumvention of the rule.

Definition of Municipal Finance Professional

MFPs Primarily Engaged in Municipal Securities Representative Activities

The Proposed Rule Change amends the definition of MFP so that associated persons ''primarily engaged'' in municipal securities representative activities based on their retail sales of municipal securities are excluded from the definition. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB believes that these instances do not outweigh the compliance burden of determining which of these persons are included in the rule. In addition, any retail sales representative who solicits municipal securities business would remain covered under the rule as an MFP.

Look Back and Look Forward Provisions

Since rule G–37 prohibits a dealer from engaging in municipal securities business within two years of certain contributions made by MFPs, a dealer must perform a two-year ''look back'' of its MFPs'' contributions in order to make a determination on whether it is subject to any prohibitions on municipal securities business. Dealers have informed the MSRB that this look back has precluded them from hiring individuals who had made contributions, even though the contributions (which may have been relatively small) were made at a time when the individuals had no reason to be familiar with rule G–37. In addition, some dealers have noted how the look back has affected individuals with regard to in-firm transfers and promotions.

Once an individual is designated as an MFP by a dealer, he or she retains this designation for two years after the last activity or position which gave rise to the designation. This ''look forward'' provision has created compliance problems for some dealers in trying to track the contributions of individuals who have left their MFP positions and transferred to other areas in the firms.

The Proposed Rule Change produces the following results:

- *MFPs primarily engaged in municipal securities representative activities:* The two-year look back is retained, and the look forward is reduced to one year.
- *Solicitor MFPs:* The two-year look back is retained, but limited only to contributions to officials of the issuer solicited, and the look forward is reduced to one year.
- *Supervisor and management-level MFPs:* The look back is reduced to six months and the look forward is reduced to one year.

Thus, the two-year look back is retained for those MFPs who are primarily engaged in municipal securities representative activities and for those who solicit municipal securities business while the two year look forward is reduced to one year for these individuals. For supervisory and management-level MFPs, the look back is reduced to six months and the look forward is reduced to one year.[5] The MSRB believes that supervisors and management-level MFPs should remain subject to the rule while they hold their supervisory positions; however, the potential link between obtaining municipal securities business and contributions made by an individual prior to becoming an MFP solely by reason of taking on a new supervisory or management position is tenuous and therefore the shorter timeframes are appropriate. The MSRB notes that most supervisors in the municipal securities department will still be covered by the two-year look back because such individuals are ''primarily engaged'' in municipal securities representative activities.

In addition, many dealers over the years have raised concerns about bringing non-MFPs to meetings with issuers to solicit municipal securities business (*e.g.*, an individual with expertise in asset-backed securities may be asked to attend a meeting with an issuer that is considering a securitization of tobacco settlement revenue or delinquent tax receipts) because the prior contributions of these individuals could result in a ban on business, even if made to issuers other than those solicited. Dealers believe that such a result is unreasonable given that the contribution by the solicitor MFP to another issuer's official would have no impact on the underwriter selection process of the issuer that he or she is soliciting. Accordingly, the Proposed Rule Change limits the look back for solicitor MFPs (*i.e.*, persons not primarily engaged in municipal securities representative activities) only to contributions to officials of the issuer solicited. Once these solicitors become MFPs, all of their subsequent contributions to any issuer official still will be covered by the rule.

2. Statutory Basis

The MSRB believes the Proposed Rule Change is consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (''Act''), which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the Proposed Rule Change is consistent with the Act in that it will facilitate dealer compliance with rule G–37, thereby further protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the Proposed Rule Change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On April 2, 2002, the MSRB proposed for comment draft amendments relating to the exemption provision and the definition of municipal finance professional as contained in Rule G–37 (the ''Notice''). The MSRB received nine comment letters from the following:

John M. Hartenstein (''Mr. Hartenstein''),
Investment Company Institute (''ICI'')
MassMutual Financial Group (''MassMutual'')
Morgan Stanley & Co. Incorporated (''Morgan Stanley'')
National Association of State Treasurers (''NAST'')
Seasongood & Mayer, LLC (''Seasongood'')
T. Rowe Price Group, Inc. (''T. Rowe Price'')
The Bond Market Association (''TBMA'')
Wilmer, Cutler & Pickering (''Wilmer'') (commenting on behalf of the

[5] The Proposed Rule Change also amends rule G–8(a)(xvi) to reduce the look back to six months for contributions made by non-MFP executive officers.

Democratic National Committee (''DNC'') and the Republican National Committee (''RNC'')).

Many commentators expressed their support for one or more of the proposals and provided suggestions for additional changes.

The Exemption Provision

Additional Relevant Factors To Be Added; Certain Qs & As To Be Withdrawn

The MSRB proposed the addition of the following relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption (conditional or unconditional) from the two-year ban on business:

- The nature of remedial or preventive measures directed specifically toward the contributor and all employees of the dealer.
- Whether, at the time of the contribution, the contributor was an MFP or otherwise an employee of the dealer, or was seeking such employment.
- The timing and amount of the contribution.
- The nature of the election (*e.g.*, federal, state or local).
- The contributor's apparent intent or motive in making the contribution, as evidenced by the facts and circumstances surrounding such contribution.

The MSRB also proposed withdrawing certain Qs and As previously published concerning when an exemption may or may not be appropriate, noting that this action is necessary to clarify that the regulatory agencies have discretion in administering the exemption process.

Morgan Stanley and T. Rowe Price expressed support for the additional relevant factors and the withdrawal of certain Qs and As. Morgan Stanley believes that the MSRB ''must go further to facilitate the NASD's equitable administration of the exemption process by adding an additional factor that expressly requires the NASD to consider the proportionality of the penalty to the violation.'' They argue that the MSRB ''must emphasize to the NASD that it has at its disposal and must utilize the option of granting conditional exemptions to fashion remedies that are more proportional to the egregiousness of the violation.''

Seasongood believes that the opportunity for exemptive relief should be available only to those dealers who discover problematic contributions prior to a third party discovering them. Seasongood argues that this approach ''will encourage firms to be forthright in dealing with violations and will more effectively punish firms who either are not vigilant in monitoring G–37 compliance or who willfully violate the rule.''

MSRB Response. The two-year ban arose from the MSRB's view of the necessity of avoiding even the appearance of a conflict of interest by an issuer in awarding negotiated municipal securities business to a dealer that made contributions (or an MFP who made non-*de minimis* contributions) to issuer officials. In reviewing exemptive requests, the appropriate regulatory agencies examine the facts and circumstances surrounding each such request and, in addition to the relevant factors set forth in the rule, may examine *any other* factor they wish, including the size of the contribution and the potential business lost. The draft amendments add to the list of factors the timing and amount of the contribution, as well as the contributor's apparent intent or motive in making the contribution. The MSRB does not believe it is appropriate to add to the list of relevant factors the amount of business lost because then it could be argued that a contribution of any size should not result in a ban on business in a large issuing state. The MSRB believes such a result would go against the purposes of rule G–37.

In addition, rule G–37(i) states that the regulatory agencies may exempt, ''conditionally or unconditionally,'' a dealer that is banned from engaging in municipal securities business with an issuer from such ban. The regulatory agencies may, if they deem it appropriate, reduce a ban on business to less than two years, and, in fact, have done so on certain occasions. Thus, the rule, as amended, already provides the regulatory agencies the ability to limit the extent of the ban on business in situations where, based on the specific facts and circumstances, a reduced penalty would be appropriate. Because the MSRB has no inspection or enforcement authority, it must defer to the regulatory agencies' judgment on these matters. Thus, the MSRB does not believe it is appropriate for it to *mandate* that the regulatory agencies grant conditional exemptions in appropriate cases, as suggested by Morgan Stanley.

The MSRB disagrees with Seasongood's suggestion that exemptions should only be available to those dealers who discover problematic contributions prior to someone else discovering them and reporting them to the authorities or the media. The MSRB believes that most dealers discover their own problematic contributions and then apply to the NASD for exemptive relief in appropriate cases. While self-discovery of problematic contributions is a factor, it should not be a conclusive one against the dealer. A failure to self-discover does not mean that a dealer has willfully violated the rule.

Adoption of an Automatic Exemption Provision

The Notice requested comments on incorporating an automatic exemption provision into Rule G–37. The draft amendments provided for an automatic exemption from a dealer's ban on business in certain limited instances. The provision sets out procedures that would permit dealers to execute two such exemptions per 12-month period for contributions made by an MFP of $250 or less if: (1) The dealer discovers the contribution within four months of the date of such contribution; (2) the contributor makes a written request for a return of the contribution within 30 calendar days of the dealer's discovery; and (3) the contributor obtains a refund within 30 calendar days of the written request. A dealer would not be permitted to execute more than one automatic exemption relating to contributions by the same MFP. The automatic exemption would not be available for contributions made by a dealer, a dealer-controlled PAC or an MFP-controlled PAC. Finally, dealers would be required to report the exemption on Form G–37/G–38 and to maintain records of such exemptions pursuant to rule G–8, on books and records. A dealer would be banned from municipal securities business until the contribution was returned.

TBMA supports the concept of an automatic exemption but believes ''that a somewhat broader exemptive provision is warranted.'' They recommend increasing the allowable dollar amount to $1,000, arguing that ''contributions that are promptly identified and refunded in full would not reasonably influence the underwriter selection process'' regardless of the amount. Morgan Stanley also recommends that the amount be increased to $1,000, arguing that ''the fact that a refund must be obtained in a prompt manner eliminates any perceived risk of pay-to-play.''

The draft amendments required a dealer to make a written request for a refund within 30 days of discovering the contribution, and obtain the refund within 30 days of such request. TBMA recommends adding a measure of flexibility to the automatic exemption provision by combining these two time periods so that dealers would be

required to obtain a refund within 60 days of discovering the contribution.

In its Notice, the MSRB noted that, in addition to the automatic exemption, dealers may continue to seek exemptions from the appropriate regulatory agency through the regular exemption process. TBMA argues that ''it is likely that waivers will continue to be granted infrequently, and the process will continue to be time-consuming. Further, the mere existence of an automatic exemption may lessen the likelihood of obtaining a discretionary waiver in circumstances in which contributions are quickly discovered and refunded but do not meet all the requirements of the automatic exemption.''

T. Rowe Price and Wilmer support the draft amendments in this area, but believe it is unfair to base the availability of the automatic exemption on a requirement that is outside the contributor's control, *i.e.,* obtaining a refund. T. Rowe Price recommends eliminating this requirement. ICI suggests that the requirement be changed to require that the contributor make a ''good faith effort'' within 30 calendar days of the dealer's discovery to obtain a return of the contribution, including making a written request for such return. T. Rowe Price also recommends that the Board eliminate the requirement that a dealer discover the contribution in a timely manner (*i.e.,* within four months).

Seasongood believes that an automatic exemption should be available only if the dealer itself discovers the rule violation (as opposed to another dealer discovering it and reporting it to the authorities or the media). They also argue that the automatic exemption should not be available if the contribution is returned after the election for which it was given, otherwise the candidate would derive the benefit of using the funds when they were needed most.

MSRB Response. The MSRB determined to adhere to the $250 contribution limit for automatic exemptions since the provision is intended to apply to routine cases involving small contributions. With regard to the requirements that contributors make a written refund request within 30 days of discovery of the contribution and obtain a refund within 30 days thereafter, the MSRB adopted TBMA's suggestion that these two time periods be combined. Thus, the Proposed Rule Change requires the contributor to obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the dealer.

The MSRB did not adopt the recommendations of T. Rowe Price and Wilmer regarding the elimination of the requirement to actually obtain a refund or ICI's suggestion to make a ''good faith effort'' to obtain a refund. While it is true that the return of the contribution is not within the dealer's control, the automatic exemption provision should be limited to those circumstances where there is no appearance of a conflict of interest. In those circumstances where the contribution is not returned within the appropriate time frame, the MSRB believes that NASD or bank regulator review is needed through the regular exemption process. Therefore, a refund must be obtained in order to execute an automatic exemption.

Additionally, the MSRB believes that requiring dealers to discover offending contributions within four months of such contributions represents a reasonable time period that will encourage dealers to develop and institute good compliance procedures. The MSRB disagrees with T. Rowe Price's suggestion that this requirement be eliminated. The time periods proposed are fair and reasonable; so long as a dealer discovers, and obtains a refund of, the offending contribution within those time periods (and otherwise complies with the provision's requirements) the dealer should be permitted to avail itself of an automatic exemption.

Finally, the MSRB disagrees with Seasongood's suggestions that the automatic exemption should only be available to those dealers who discover the problematic contributions before someone else does and reports the information to the authorities or the media, and only if the contribution is returned before the election for which it was intended. As noted above, the MSRB believes that most dealers discover and report their own bans on business and then apply to NASD or bank regulator for exemptive relief. Moreover, the requirement that dealers discover the offending contributions within four months acts as a significant incentive for dealers to discover their own potential bans on business. The MSRB also did not adopt Seasongood's suggestion that dealers be required to obtain a refund prior to the election for which it was intended. Given the relatively small dollar amounts involved, the Board was not persuaded that this issue represented a significant problem or otherwise merited regulatory action.

Definition of Municipal Finance Professional

MFPs Primarily Engaged in Municipal Securities Representative Activities

The draft amendments provide for amending the definition of MFP to exempt retail sales representatives. While there may be limited instances in which retail sales persons make contributions to obtain municipal securities business for dealers, the MSRB proposed the draft amendments because of its belief that these instances do not outweigh the compliance burden of determining which of these persons are included in the rule. In addition, any retail sales person who solicits municipal securities business would be covered under the rule as an MFP.

T. Rowe Price states that it strongly supports the proposal. It notes that it is in agreement ''with the Board's belief that if the retail salesperson is not soliciting municipal securities business, the connection between the retail salesperson's contributions and any awarding of municipal securities business is very tenuous.'' T. Rowe Price notes that, for its firm, ''where the registered representatives who deal with investors and potential investors in Section 529 Plan securities do not receive commission-based compensation and do not have their own client base * * * there is no connection between any contributions they may make and the awarding of a long-term contract by a state for the program management of its Section 529 Plan.'' It states that the ''proposal brings much needed clarity to the area without diluting the effectiveness of Rule G–37.''

Seasongood is opposed to the proposal. It states that firms are ''seeking municipal underwriting business by touting the size and effectiveness of their retail sales force. As evidenced by the significant increase in issuers having a separate 'retail order period' prior to the regular order period, firms utilize their sales forces to generate underwriting fees from tax-exempt financings. Specifically, the takedown component, which is usually the largest part of an underwriter's fee, is being earned by the firm and the salesperson.'' Seasongood believes that the proposal will make it more difficult for a firm's competitor to uncover violations in helping to enforce compliance with the rule.

MSRB Response. The MSRB determined to exempt retail sales representatives from the definition of MFP. If a retail sales person is not soliciting municipal securities business, the appearance of a conflict of interest is negligible because there is little

reason to believe that the contribution was intended to be, or taken to be, an attempt to gain influence in the awarding of municipal securities business. A retail sales person who solicits municipal securities business will still be covered under the rule as an MFP. The Commission staff asked that the MSRB make a technical language revision to the definition of MFP concerning retail sales persons to clarify that the exemption from the definition applies to sales activities with individual (not institutional) investors. The MSRB has done so.

Look Back and Look Forward Provisions

In the Notice, the MSRB requested comments on draft amendments concerning the look back and look forward provisions that would produce the following results:

- *MFPs primarily engaged in municipal securities representative activities:* Retain the two-year look back. Reduce the look forward to one year.
- *Solicitor MFPs:* Retain the two-year look back, but limit it only to contributions to officials of the issuer solicited. Reduce the look forward to one year.
- *Supervisor and management-level MFPs:* Eliminate the look back and look forward.

T. Rowe Price supports the proposals concerning both the look back and look forward provisions.

TBMA supports only the proposals for eliminating the look back and look forward provisions for supervisor and management-level MFPs. TBMA questions ''whether the look back and overhang requirements, as applied to other persons, are justified.'' With respect to the look forward provision, TBMA states that ''the MSRB has not identified *any* circumstances in which it is likely that a contribution by a former MFP for up to one year *after* losing that status is being made for the purpose of attracting municipal business.'' If the MSRB continues to apply look forward and look back provisions for MFPs primarily engaged in municipal securities representative activities and solicitor MFPs, TBMA states that a six-month period ''is more than sufficient to remedy possible abuses.'' TBMA notes that ''a six-month period is more consistent with the requirements of Rule G–38,'' on consultants, and that dealers ''have designed their compliance systems to track such contributions over these time periods.''

Seasongood states that the look forward provision should remain at two years and it should continue to apply to supervisor and management-level MFPs. With respect to the proposal to limit the two-year look back for solicitor MFPs to contributions to officials of the issuer solicited, Seasongood notes that it ''could not disagree more strongly.'' Seasongood states that the proposal ''would eviscerate the definition of solicitation by allowing anyone to participate in a presentation calculated to appeal to issuer officials for municipal securities business without repercussions. This definition has been the lynchpin in preventing the ''pay to play'' games G–37 was designed to stop. If a firm soliciting municipal business can bring individuals to the presentation who are allowed to contribute to campaigns without being banned from their business, the MSRB will be opening a huge hole in the overall effectiveness of G–37 and the ability of competitors to discern when a violation has occurred.''

MSRB Response. The MSRB determined to adopt the draft amendments to revise the look back and look forward provisions for MFPs primarily engaged in municipal securities representative activities and for solicitor MFPs. The MSRB believes it is important to retain the longer time frames for those MFPs more directly involved in obtaining municipal securities business. Once an associated person of a dealer solicits municipal securities business, the new look back requirement would be limited to officials of the issuer solicited. All contributions by this solicitor MFP to any issuer official would be covered going forward.

The SEC staff asked that the MSRB revise the proposal for supervisor and management-level MFPs as contained in the draft amendments. The SEC staff asked that the look back be revised to six months (instead of eliminated) and the look forward be reduced to one year (instead of eliminated). The MSRB has revised the requirements per the SEC staff's suggestions.

De Minimis Contributions

Maintain the ''Entitled to Vote'' Requirement

Contributions made by an MFP to officials of an issuer for whom the MFP is entitled to vote will not cause the MFP's dealer to be prohibited from engaging in municipal securities business with the issuer if the contributions, in total, are not in excess of $250 by such MFP to each official of such issuer, per election. Wilmer believes that the *de minimis* exception should be available to any MFP, not just those entitled to vote for the particular candidate, arguing that ''[t]here are compelling reasons that a contributor who lives in one jurisdiction might want to support a candidate in a different jurisdiction. When a voter lives in a different jurisdiction from where the voter works, the voter might feel effected as much or more by the election of county or city officials in the work jurisdiction than at home.'' Similarly, NAST believes that the Board should eliminate the ''entitled to vote'' requirement, noting that ''the determination of whether a contribution is so small as to be *de minimis* should not depend on where the contributor lives.''

MSRB Response. The MSRB determined to maintain this requirement. Eliminating the requirement would allow national firms with numerous MFPs to make many contributions to an issuer official. This would create at least the appearance of a conflict of interest since the MFPs would have no direct interest in the issuer's jurisdiction.

Maintain the $250 *De Minimis* Amount

NAST ''strongly believes'' that the *de minimis* amount should be raised to $1,000 to correspond to current federal limits, arguing that:

First, Congress determined that $1,000 per election is a sufficiently low amount that it does not raise conflict of interest or favoritism concerns. Inflation and the increasing amount of contributions required to compete in local, state, and national elections in many jurisdictions have diminished even further the potential impact of an individual appropriate to prevent corruption or the perception of corruption in connection with contributions in the amount of $1,000 or less.* * * Second, increasing the *de minimis* contribution exemption to correspond with the federal contribution limit would significantly reduce the likelihood that a contributor might inadvertently trigger a two-year ban on business under rule G–37.* * * Finally, raising the *de minimis* exemption to the current FECA level would eliminate the disproportionate impact of rule G–37 on contributions to issuer officials who are candidates for federal office.

MSRB Response. First, the MSRB determined that $250 continues to be an appropriate limit. Second, the inclusion of ''the nature of the election'' in the list of relevant factors should assist NASD and bank regulators in deciding whether to grant an exemptive request (conditionally or unconditionally) in view of the contribution amount and the federal contribution limits. Finally, the SEC's 1994 rule G–37 Approval Order rejected the argument of a

disproportionate impact on issuer officials who are candidates for federal office.

Other Issues

Eliminate the Two-Year Ban on Business

Morgan Stanley is concerned that NASD, in administering exemptive requests, does not take into account ''the proportionality of the penalty to the perceived violation. * * *'' They note that ''the two-year ban applies regardless of the nature of, or intent in making, the contribution. Thus, a $1 million contribution triggers the same ban as a $5 contribution * * * [and the] so-called 'death penalty' applies equally to minor infractions and blatant attempts to engage in 'pay-to-play'.'' Morgan Stanley also states that the protracted nature of the current exemption process ''is particularly problematic when a broker-dealer has committed significant resources in connection with a municipal securities deal and is suddenly subject to a ban because it discovers an inadvertent contribution by an MFP with no relationship to that particular deal.'' While they agree with the Board's proposal to amend the exemption process, Morgan Stanley believes that ''simply changing the exemption standards does not go far enough to remedy the problem.* * * It is imperative that the Rule incorporate a mechanism designed to avoid disproportionate and clearly inequitable results.'' Therefore, Morgan Stanley urges the Board to consider eliminating the two-year ban on business and replacing it ''with a fair and equitable enforcement process in which the NASD has the mandate to consider issues of proportionality and impose sanctions that are consistent with the facts and circumstances of each case.'' They state that, under this approach, offending contributions would not automatically trigger the two-year ban but instead would require the NASD ''to craft a penalty that is proportional to the egregiousness of the violation.''

MSRB Response. The MSRB determined not to eliminate the two-year ban on business that results when a dealer or MFP (or their controlled PACs) makes a contribution to an issuer official. In formulating rule G–37, the MSRB initially proposed a rule that would focus on the intent of the giver and be enforced like other MSRB rules through the normal inspection and review process of the enforcement agencies. Many commentators noted that such a rule would not halt pay-to-play practices because determining the intent of the giver would be impossible. Thus, the MSRB determined to make the ban on business an automatic result of certain contributions to issuer officials. In this way, the MSRB believed that pay-to-play practices would be halted, but MFPs still could contribute to those they were entitled to vote for, and could continue to volunteer their services to those elections. The ban is a way to ensure fair competition by avoiding conflicts of interest or the appearance of such a conflict.

Morgan Stanley complains that the two-year ban should be eliminated because it does not take into account the proportionality of the contribution to the business lost. Morgan Stanley also gives examples of MFPs making small contributions that resulted in bans on business but were not granted exemptions by NASD. As noted in rule G–37(i), the regulatory agencies have the ability to review a number of factors in making its decision on exemption requests and has the ability to make conditional or unconditional exemptions. Certain of the conditions noted include what procedures the firm had in place at the time of the contribution and the actions of the MFP. After reviewing these and other facts, in a number of cases exemptions were not given. In other cases, the ban was lifted, either in whole or in part. A review of the totality of the factors apparently led NASD to these results. If one of the factors had been the proportionality of the contribution to the business lost, one could argue that a contribution of any size should not result in a ban on business in a large issuing state. The MSRB believes that the addition of such a factor would push the process to be too lenient in contravention of the purposes of rule G–37.

Contributions by Bank PACs and Bank Holding Company PACs

The MSRB's Web site contains links to information provided to the Federal Election Commission (''FEC''), the Internal Revenue Service (''IRS'') and state election offices.

Wilmer supports the Board's decision to continue excluding from rule G–37 contributions by bank PACs and BHC PACs. On the other hand, Morgan Stanley states that ''bank affiliated dealers have the ability to circumvent the spirit of the Rule through contributions made by their bank affiliate or its PAC * * *. [T]his unintended loophole undermines the effectiveness of the Rule and places traditional broker-dealer firms at a competitive disadvantage.'' Morgan Stanley therefore recommends that the Board require disclosure on Form G–37 of contributions to issuer officials by dealer affiliated banks, bank PACs and BHC PACs. They believe that this ''would bring much needed transparency to this area * * * [which] would serve to discourage attempts to circumvent the spirit of the Rule through the use of bank affiliates.

Seasongood believes that sufficient disclosure of bank PAC contributions does not currently exist under federal law. They state that certain Web sites (*e.g., http://www.fec.gov/finance__reports*) ''are not user-friendly * * * which prevents someone from gleaning the information necessary to determine what PAC gave money to who.'' Moreover, the ''information available is old and difficult to analyze.'' Seasongood believes that the MSRB should be the single repository for information relating to political contributions and municipal securities business.

MSRB Response. The MSRB determined not to require disclosure on Form G–37/G–38 of contributions to issuer officials from dealer-affiliated banks, bank PACs and BHC PACs. As noted above, the MSRB has published links on its website to information provided by the FEC, IRS and state election offices. Banks and their PACs contribute to state and local officials for many reasons that have nothing to do with acquiring municipal securities business. Requiring affiliated dealers to report these contributions to the MSRB would raise a potentially unfair implication that the contribution was intended to influence the official to exercise his or her discretion in favor of granting an affiliate municipal securities business, when in fact the contribution may have been made to further the bank's legitimate political activity and there may be no connection between the contribution and the affiliated dealer's business.

Moreover, to the extent that dealer-affiliated bank PACs are controlled by the dealer, or by an MFP of the dealer (even if the MFP is an employee of the bank), rule G–37 already obligates the dealer to report contributions made by the bank PAC. In a recent administrative proceeding, the SEC, in only its second rule G–37 enforcement action, held that contributions by a bank PAC, controlled by bank-employed MFPs, resulted in bans on business by the affiliated dealer.[6] When the dealer engaged in banned business, it violated rule G–37.

Finally, there already is substantial public reporting of PAC contributions. The FEC requires all corporate affiliated

[6] *See In the Matter of Fifth Third Securities, Inc.,* Exchange Act Release No. 46087, June 18, 2002.

PACs that are not established exclusively for state and local (*i.e.*, nonfederal) activity to register and report receipts and expenditures to the FEC. These reports are available for free and online from the FEC's Web site. The FEC's Web site provides the ability to view actual financial reports filed by PACs from 1993 to the present. These reports usually reflect contributions to federal campaigns. In addition, some reports reflect state and local campaign activity. The FEC website also provides researchers with the ability to electronically search the records for contributions to PACs by individuals, contributions made or received by a specific committee using various criteria, and contributions received by a specific campaign using a candidate's name, state, or party affiliation. While the information on the FEC website may be of limited use to persons searching for state and local contributions, the FEC website also links to state records offices that receive campaign finance reports and make them publicly available. These state records offices provide a wealth of information about contributions to state and local officials by corporations and their affiliated PACs. In addition, section 527 of the Internal Revenue Code, which provides tax-exempt status for political organizations, including PACs and federal, state and local committees, requires that political organizations that receive $25,000 or more in gross receipts and wish to be tax exempt under section 527 to file certain informational forms. Currently, it is possible to find additional information about bank PACs on the IRS Web site.

Constitutional Issues

NAST reiterates constitutional issues that the organization raised in 1993 when rule G–37 was first proposed. Specifically, NAST questions whether the rule violates the First Amendment because it is underinclusive or overinclusive, and ''whether the rule is justified by a compelling governmental interest and whether it is narrowly tailored to achieve the goal.'' [7] NAST also raises again issues of federalism stating that, ''[w]hile the scope and subject matter of the rule is the regulation of municipal securities dealers (and related professionals), it is also clear that the rule has a direct impact on state and local political speech and the conducting of state and local elections.'' NAST goes on to say that ''extending the proposed rule to federal officials would remove the present inequity of having a federal rule which limits the fundraising ability of state and local officials running for national office, while leaving incumbent federal officials free to take political contributions and gifts from the securities industry.''

MSRB Response. All of the constitutional issues raised by the NAST comment letter were addressed and rejected in both the SEC's 1994 rule G–37 Approval Order and the United States District Court of Appeals for the District of Columbia Circuit decision in *Blount v. Securities and Exchange Commission*.[8] In *Blount,* a unanimous panel of the District of Columbia Circuit found that rule G–37 was constitutional under a strict scrutiny analysis by finding that the rule was narrowly tailored to serve a compelling governmental interest.[9] The court found the purposes of the rule of protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be substantial and compelling. The court also held that rule G–37 self-evidently advanced that interest, noting that,

> Underwriter's campaign contributions *self-evidently* create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the government entity. (Emphasis added)

The court further concluded that ''the link between eliminating pay-to play practices'' and the goals of ''perfecting the mechanism of a free and open market'' were also ''self-evident.''

Finally, the court held that the rule was ''narrowly tailored'' to serve these compelling governmental interests.[10] Accordingly, the court concluded that the rule met the strict scrutiny test, noting that the rule is closely drawn and thus avoids unnecessary abridgement of First Amendment rights.[11]

NAST's federalism concerns were also addressed and rejected in the SEC's 1994 rule G–37 Approval Order. Specifically, the Commission stated that ''the proposed rule change is a necessary and appropriate measure to prevent fraudulent and manipulative acts and practices and the appearance of fraud and manipulation in the municipal securities market by eliminating 'pay-to-play'' arranged underwritings.' The Commission also noted that:

> The Commission believes that it is not necessary to extend the proposal to include contributions to candidates for federal office. The proposal addresses abusive political contributions to officials of issuers who may influence the selection of municipal securities underwriters. Because federal office holders do not influence the underwriter selection process, the Commission believes it would not be appropriate to include federal candidates under the rule's requirements. By the same token, the Commission also believes that any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements.[12]

Ballot Referenda

One commentator, Mr. Hartenstein, raised the issue of contributions to ballot measure campaigns. He states that contributions to ballot measure campaigns are an inappropriate influence ''in the selection of investment banks and other municipal market participants for the consulting work that is generated by successful local bond measures.'' He notes that, ''[t]his influence is not unlike the pernicious effects that the rule is intended to curb.'' Mr. Hartenstein states that, ''in the ballot measure context, investment banking firms may freely make money contributions in order to directly influence the appointed and elected public officials who decide which firms to hire for the public agency's bond business, without

[7] NAST continues, ''[a]s an example of a potential First Amendment problem, NAST submits that the rule remains vulnerable to attack as being underinclusive in that it does not reach all the municipal securities professionals who participate in municipal securities transactions and who have a comparable incentive and opportunity to engage in unethical and anti-competitive behavior.''

[8] In 1994, William Blount, the then Chairman of the Alabama Democratic Party and a municipal securities dealer, brought an action against the SEC alleging that rule G–37 was unconstitutional. *Blount v. SEC,* 61 F. 3d 938 (D.C. Cir, 1995), *cert. denied,* 116 S. Ct. 1351 (1996).

[9] In 1996, the Supreme Court denied Blount's petition for a writ of *certiorari* to review the Court of Appeal's decision.

[10] The court observed that the dealer is barred from engaging in business with the particular issuer for only two years after making the contribution, and from soliciting contributions only during the time it is engaged in or seeking business with the issuer associated with the donee. It noted further that municipal finance professionals are still able to contribute up to $250 per election to each official for whom they are entitled to vote, without triggering the business bar. Finally it observed that, as interpreted by the SEC, ''the municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events.''

[11] The court also specifically rejected *Blount's* claims that rule G–37 is fatally underinclusive, noting that ''a rule is struck for underinclusiveness only if it cannot 'fairly be said to advance any genuinely substantial governmental interest.' ''

[12] The United States District Court of Appeals for the District of Columbia Circuit in *Blount* also summarily rejected as meritless petitioner's claim that rule G–37 had an effect on states' own election processes and, as such, usurps the states' power to control their own elections.

any fear of sanctions under the rule. This clear flouting of the spirit of the rule should be stopped, and it can be stopped if the rule is amended to extend to ballot and bond measure elections.''

Mr. Hartenstein states that contributions to bond measure campaigns ''can result in higher bond interest and bond issuance costs, and higher taxes, than if municipal finance professionals were selected without regard to the amount they will contribute to campaigns.'' He notes that it is ''in the public interest to limit or prohibit contributions to local school bond election campaigns by interested private companies and individuals. This is an important corollary to the fundamental problem that rule G–37 is designed to address.''

MSRB Response. The MSRB is reviewing this issue to determine whether any further action in this area is advisable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0608. Copies of the submissions, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2002–12 and should be submitted by April 29, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8447 Filed 4–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47608; File No. SR–NASD–2003–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Modify Computer-to-Computer Interface Fees for NASD Members

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD rule 7010 to modify the fees paid by NASD members for bandwidth enhancements of Computer-to-Computer Interface (''CTCI'') lines.[5] Nasdaq will implement this rule change on April 1, 2003.

The text of the proposed rule change is below. New text is in *italics.* Deleted text is in [brackets].

* * * * *

7000. Charges for Services and Equipment

A. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[(3)] *(2)* The following charges shall apply for each CTCI subscriber[*]:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	
Single 56kb line with single hub and router. (For remote disaster recovery sites only.)	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$[4000]*600*/month per 64kb increase above 128kb T1 base[.].

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq also submitted a proposed rule change to make an identical modification to the bandwidth enhancement fee paid by non-members. *See* Securities Exchange Act Release No. 47607 (April 1, 2003) (order granting Accelerated Approval to SR–NASD–2003–46).

Options	Price
Installation Fee	$2000 per site for dual hubs and routers; $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1700 per relocation.

[* As reflected in SR–NASD–00–80 and SR–NASD–00–81, Nasdaq began replacing x.25 CTCI circuits with TCP/IP CTCI circuits in January 2001. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which had remained $200 per month per circuit—was increased to $1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of $625 per month per circuit from February 1, 2002 until the date of circuit termination.]

(g)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service (''ACT''), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol (''TCP/IP''), a transmission protocol that is robust, efficient, and well known among the technical community.

As part of an ongoing effort to reduce costs incurred by Nasdaq's market participants to use its systems and services, Nasdaq proposes to reduce the fee for CTCI bandwidth enhancements [6] from $4,000 to $600 per month for each 64 kilobit (''kb'') increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb). Nasdaq believes that the fee reduction will make it more economical for member firms who connect directly to Nasdaq to make the bandwidth upgrades needed to allow them to route higher volumes of orders to Nasdaq, as well as to build excess capacity that allows them to be prepared for volume spikes that occur during major market events.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [10] and rule 19b–4(f)(2) thereunder [11] because it establishes or changes a due, fee, or other charge. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–43 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8442 Filed 4–7–03; 8:45 am]

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[6] The term ''bandwidth'' refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

[7] Nasdaq also proposes to delete a footnote from NASD rule 7010(f) that describes pricing changes relating to x.25 CTCI circuits, which are no longer in use.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47607; File No. SR–NASD–2003–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Modify Computer-to-Computer Interface Fees for Non-NASD Members

April 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Amendment No. 1 was filed on March 31, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify the fees paid by persons that are not NASD members for bandwidth enhancements of Computer-to-Computer Interface (''CTCI'') lines.[4] Nasdaq proposes to implement the rule change on April 1, 2003.[5]

The text of the proposed rule change, as amended, is below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

7000. Charges for Services and Equipment

A. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[(3)] (*2*) The following charges shall apply for each CTCI subscriber[*]:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	
Single 56kb line with single hub and router. (For remote disaster recovery sites only.)	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$[4000] *600*/month per 64kb increase above 128kb T1 base[.].
Installation Fee	$2000 per site for dual hubs and routers $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	$1700 per relocation.

[*As reflected in SR–NASD–00–80 and SR–NASD–00–81, Nasdaq began replacing x.25 CTCI circuits with TCP/IP CTCI circuits in January 2001. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits '' which had remained $200 per month per circuit '' was increased to $1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of $625 per month per circuit from February 1, 2002 until the date of circuit termination.]

(g)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service (''ACT''), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol (''TCP/IP''), a transmission protocol that is robust, efficient, and well known among the technical community.

As part of an ongoing effort to reduce costs incurred to use its systems and services, Nasdaq proposes to reduce the fee for CTCI bandwidth enhancements[6] from $4,000 to $600 per month for each 64 kilobit (''kb'') increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb). Nasdaq has also proposed an identical pricing

[1] 5 U.S.C. 778s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from John M. Yetter, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division'') Commission, dated March 28, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq proposed to implement the proposed rule change on April 1, 2003 and requested accelerated approval of the proposal.

[4] Nasdaq also submitted a proposed rule change to make an identical modification to the bandwidth enhancement fee paid by NASD members. *See* Securities Exchange Act Release No. 47608 (April 1, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–43).

[5] *See* Amendment No. 1, *supra* note 3.

[6] The term ''bandwidth'' refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

decrease for NASD member firms [7] and now proposes to offer this fee reduction to non-NASD members that use CTCI.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–46 and should be submitted by April 29, 2003.

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of Section 15A(b)(5) of the Act [11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or systems which the association operates.[12] Specifically, the proposed fee reduction makes CTCI bandwidth enhancements more economical to all market participants.

The Commission notes that Nasdaq has also submitted a proposed rule change to make an identical decrease to the bandwidth enhancement fee paid by NASD members that use CTCI.[13] Although this proposal became effective upon filing with the Commission on March 20, 2003, Nasdaq has proposed to delay the implementation of the fee decrease for NASD members until April 1, 2003. Similarly, Nasdaq has proposed to implement the fee decrease on April 1, 2003 for non-NASD members who use CTCI. Therefore, Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will allow for the equitable treatment of members and non-NASD members by allowing Nasdaq to implement the fee reduction for both NASD members and non-NASD members on April 1, 2003. Accordingly, the Commission finds good cause, consistent with Section 15A(b) [14] and Section 19(b)(2) of the Act [15] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2003–46) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8443 Filed 4–7–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47612; File No. SR–NASD–2003–54]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for Persons Who Are Not NASD Members

April 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On April 1, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Test Facility pricing under Rule 7050 for persons that are not NASD members.[4] Nasdaq proposes to implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new

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[7] *See supra* note 4.

[8] Nasdaq also proposes to delete a footnote from NASD Rule 7010(f) that describes pricing changes relating to x.25 CTCI circuits, which are no longer in use.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See supra* note 4.

[14] 15 U.S.C. 78*o*–3(b).

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq requested accelerated approval of the proposed rule change. See Letter dated March 31, 2003, from Alex Kogan, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission.

[4] Nasdaq is also submitting an identical proposed rule change applicable to members. *See SR–NASD–2003–53.*

language is in *italics;* proposed deletions are in [brackets].

* * * * *

7050. Other Services

(a) No change.

(b) No change.

(c) No change.

(d) Nasdaq Testing Facility [(NTF)]

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), or market data vendor feeds through the Nasdaq Testing Facility (NTF) [of The Nasdaq Stock Market, Inc. (Nasdaq)] shall pay the following charges:

$285/hour—For *an Active Connection for* CTCI/NWII API testing [between 9 a.m. and 5 p.m. E.T. on business days]*during the normal operating hours of the NTF*;

$75/hour—*For an Idle Connection for CTCI/NWII API testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;*

No charge—For an Idle Connection for CTCI/NWII API testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

$333/hour—For CTCI/NWII API testing *(for both Active and Idle Connections)* at all [other] times *other than the normal operating hours of the NTF* [on business days, or on weekends and holidays].

(2) *(A) An ''Active Connection'' commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.*

(B) An ''Idle Connection'' commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A ''Period of Inactivity'' is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) renew or enhanced services and/or software provided by Nasdaq;[or]

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency[.]; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

([3]4) Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	[Proposed] Price
NTF Market Data	Test Market Data Vendor Feeds over a 56kb dedicated circuit	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit	$1,100/circuit/month.
NTF CTCI	CTCI service over a 56kb dedicated circuit	$1,100/circuit/month.
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb)	$1,800/2 circuits/month.
NTF Circuit	Installation of any service option including SDP configuration	$700/circuit/installation.

([4]*5*) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

([5]*6*) ''New NTF subscribers'' are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility (''NTF''). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq's systems at all. The proposed rule change seeks to encourage subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate ($285 per hour) remains unchanged with respect to the times when the connection is active during the NTF's normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate ($75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF's normal operating hours, when the existing rate ($333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF's normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF

to test a Nasdaq service that the subscriber has not used previously.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] including section 15A(b)(5) of the Act,[6] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–54 and should be submitted by April 29, 2003.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The Commission believes that the proposed new pricing structure should provide users with more flexible and economically efficient access to the NTF. Additionally, the Commission notes that the proposed pricing structure is identical to that proposed to be applied to NASD members.[8] The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is appropriate in that it will ensure that persons who are not NASD members receive the benefits of a more flexible pricing structure for use of the NTF as soon as possible.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–54) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(5).

[7] 15 U.S.C. 78o-3(5).

[8] *See* SR–NASD–2003–53, *supra,* n. 4.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47603; File No. SR–NSCC–2003–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Creating New Cost Basis Reporting Service

March 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 24, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grand accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change creates a new Cost Basis Reporting Service (''CBRS'') that will facilitate the automated exchange of cost basis information regarding a customer account transfer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is add a new Rule 30 to NSCC's Rules and Procedures (''Rules'') in order to create a new CBRS that will facilitate the automated exchange of cost basis information related to a customer account transfer.

NSCC has developed a cost basis reporting service to augment its current Automated Customer Account Transfer Service (''ACATS'') processing. Cost basis reporting is useful to customers for tax reporting purposes. Cost basis information is currently captured and entered into many firm's portfolio systems manually. NSCC was requested to centralize and standardize the transmission of cost basis information.

CBRS will be available to NSCC members and qualified securities depositories acting on behalf of their participants and will permit them to transmit between themselves on an automated basis cost basis information with respect to accounts that have previously been transferred via ACATS. Participants may send cost basis data to NSCC multiple times during the day up to a predetermined cutoff.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified its member of the terms of the proposed service by an Important Notice on November 4, 2002. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that NSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[4] of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Providing an automated and standardized method of transmitting cost basis information related to securities accounts that are transferred from one broker-dealer to another through ACATS should reduce NSCC's members' administrative burdens and as such should promote the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow NSCC to implement this new service in time for it to provide benefits for brokers, dealers, and investors for the current tax filing period and will also enable NSCC to implement CBRS in accordance with its systems implementation schedule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NSCC–2003–02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–02 and should be submitted by April 29, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47614; File No. SR–NYSE–2002–55]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Regarding the Dissemination of Liquidity Quotations

April 2, 2003.

I. Introduction

On October 28, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to permit the display and use of quotations in stocks traded on the NYSE to show additional depth in the market for those stocks (''Liquidity Quote Proposal''). On December 20, 2002, NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for public comment in the **Federal Register** on January 2, 2003.[4] On March 20, 2003, NYSE filed Amendment No. 2 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 19, 2002 (''Amendment No. 1''). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, further details on the display of additional quotations in stocks to show market depth.

[4] Securities Exchange Act Release No. 47091 (December 23, 2002), 68 FR 133.

proposed rule change.[5] The Commission has received 12 substantive comment letters on the proposed rule change, including the NYSE's response addressing the commenters' concerns.[6] The Commission has substantial concern that the proposed rule change is not consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NYSE. As an alternative to instituting proceedings to determine whether the proposed rule change should be disapproved, 15 U.S.C. 78s(b)(2)(B), this order approves the proposed rule change, as amended, conditional on the delayed effectiveness of the proposal as described below.

[5] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 20, 2003 (''Amendment No. 2''). In Amendment No. 2, the NYSE removes paragraph (c) of NYSE Rule 1001, which currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requites the market. The NYSE's proposed autoquoting feature in NYSE Rule 1000, which will systematically update a published quotation immediately reflecting the next best bid or offer on the specialist's book, will have the effect of superceding this provision. This was a technical amendment and is not subject to notice and comment.

[6] *See* letters from Thomas F. Secunda, Bloomberg, dated December 16, 2002 (''Bloomberg Letter I''); W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., dated January 22, 2003 (''Schwab Letter''); Craig S. Tyle, General Counsel, Investment Company Institute, dated January 23, 2003 (''ICI letter''); Thomas F. Secunda, Bloomberg, dated January 23, 2003 (''Bloomberg Letter II''); Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, Cincinnati Stock Exchange, Inc., dated January 24, 2003 (''CSE Letter''); Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 27, 2003 (''Phlx Letter''); Kevin M. Foley, Bloomberg, dated February 26, 2003 (''Bloomberg Letter III''); and Paul Merolla, Executive Vice President and General Counsel, Instinet Corp., dated March 14, 2003 (''Instinet Letter''), to Jonathan G. Katz, Secretary, Commission. *See also* letters from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Annette Nazareth, Director, Division, Commission, dated February 7, 2003 (''NYSE Letter''); Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, to William H. Donaldson, Chairman, Commission, dated March 11, 2003 (''Grasso Letter I'') and March 20, 2003 (''Grasso Letter II''); and Greg Babyak, Counsel to Bloomberg, to William H. Donaldson, Chairman, Commission, dated March 26, 2003 (''Bloomberg Letter IV''). *See also* emails from Richard Bernard, Executive Vice President and General Counsel, NYSE, to Annette Nazareth, Director, Division, Commission, *et al.*, dated February 11, 2003, February 12, 2003, February 14, 2003, and March 4, 2003. Luis de la Torre, Counsel to Commissioner Goldschmid, Brian A. Stern and Mary S. Head, Counsels to Commissioner Glassman, wrote memoranda to the official file documenting several meetings.

II. Description of the Liquidity Quote Proposal

A. Exchange Rules Affecting Dissemination of Liquidity Quote

The Exchange is required by Rule 11Ac1–1 under the Act[7] to disseminate the highest bid and lowest offer in its market (*i.e.*, the ''best quote'' available for dissemination). The Exchange believes that decimal trading has resulted in many more price intervals that can be the best quote, with the result that the highest bid and lowest offer may not reflect the true depth of the market at prices reasonably related to the last sale.

The Exchange is proposing to address this issue by providing for the dissemination, in selected securities as appropriate, of a ''liquidity bid'' and a ''liquidity offer,'' which would reflect aggregated Exchange trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer).

The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in the subject security. Liquidity bids and offers would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

According to the Exchange, it would not be mandatory to disseminate a separate liquidity bid and/or offer. In certain instances, depending on the depth of the market, the Exchange represents that the best bid (offer) and the liquidity bid (offer) may converge. In such case, the Exchange would make available the same price and size both as the best bid (offer) over the Consolidated Quotation System (''CQS'') and as the liquidity bid (offer) via the Exchange's Common Access Point (''CAP''). In any event, all disseminated bids and offers (best and liquidity) would be deemed to be ''firm quotations'' that are available for interaction with trading interest.

Orders seeking to trade against the best and liquidity bids/offers would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.[8] Proposed NYSE rule 60 includes details on how market and limit orders, as well as XPress orders, would be executed against best and liquidity bids and offers.

First, with respect to market orders, NYSE proposes that when a liquidity bid is published in addition to a best bid, a market order to sell of a size greater than the size of the best bid will be executed to the extent possible against the best bid[9] with the balance of the sell order being executed at the higher price of the liquidity bid or at the price of other orders on the book below the best bid, but above the liquidity bid.[10]

NYSE is proposing that similar procedures would be used for the execution of limit orders when there are liquidity bids and offers as well as best bids and offers. In that regard, when a liquidity bid is published in addition to a best bid, a limit order to sell of a size greater than the size of the best bid, but which is limited to a price executable at or above the liquidity bid price, would be executed first against the best bid (or crossed as explained above), with the balance of the order being executed within its limit price at a price at which orders on the book will not be traded through.[11]

[7] 17 CFR 240.11Ac1–1.

[8] An XPress order is an order of a specified minimum size that is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the minimum share size, currently 15,000 shares, at the same price for no less than 15 seconds.

[9] The order will be crossed by the specialist when he or she is acting as agent for the order using the auction market procedures in NYSE Rule 76, which calls for the member to publicly bid and offer on behalf of the orders before making a transaction with him- or herself.

[10] For example, assume the best bid is $20.10 for 200 shares, while the liquidity bid is $20.05 for 10,000 shares, with no other bids in between the best and liquidity bids. If a market order to sell 1000 shares is received by the specialist, 200 shares would trade at the best bid price of $20.10, and 800 shares would trade at $20.05, the liquidity bid price, unless the specialist in crossing the order obtains price improvement for it. If there were other bids on the book between the best and liquidity bids, the sell market order could receive executions at those prices. For example, if, in addition to the best and liquidity bids of $20.10 and $20.05 in the previous example, there were also a bid of $20.07 for 300 shares, the market order to sell would be executed as follows—200 shares at the best bid of 20.10, 300 shares at $20.07 and 500 shares at the liquidity bid of $20.05, unless the specialist in crossing the order obtains price improvement for it. Market orders to buy would follow the same principles using the best and liquidity offers.

[11] For example, assume there is a best bid for 200 shares of $20.10 and a liquidity bid of $20.05 for 10,000 shares. In addition, there is a bid for 500 shares at $20.07. If a limit order to sell 1,000 shares at $20.05 is received by the specialist, it would be executed as follows—200 shares at $20.10, 500 shares at $20.07 and 300 shares at the liquidity bid of $20.05. In all these examples, however, as with market orders, the specialist would follow NYSE auction market crossing procedures in an effort to obtain price improvement for the order. Limit orders to buy would follow the same principles.

Third, regarding the execution of XPress Orders,[12] the Exchange proposes to amend Supplementary Material .40 of NYSE rule 13 (''Definitions of Orders'') to provide that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. The Exchange expects that the size of Liquidity Quote bids and offers will be of a size that represents significant interest for a stock and will, in many stocks, be greater than 15,000 shares. However, where the share size of the liquidity bid or offer does not equal 15,000 shares, the Exchange believes that institutional interest in trading at the liquidity price may still be present, and that utilizing the XPress trading protocol will be an appropriate way for this interest to access such displayed greater liquidity. Liquidity Quote will still be required to be at the same liquidity price for at least 15 seconds to be eligible as a quotation against which an XPress order may be executed.

Further, the Exchange proposes to amend NYSE rule 60 to provide that an XPress order may be priced at either the best bid or offer price if XPress eligible (*i.e.*, for at least 15,000 shares for at least 15 seconds), or priced at the liquidity bid or offer price, if, again, XPress eligible. An XPress order to buy priced at the liquidity offer price will be either executed at that price, or a price that will allow an XPress order to be filled without trading through orders on the book. The Exchange represents that specialists will seek price improvement for XPress orders in accordance with the Exchange's procedures for the execution of XPress orders.[13]

B. Automated Dissemination of Quotations

In conjunction with the dissemination of dual quotations, the Exchange proposes to provide for the automated dissemination of the NYSE best bid and offer as SuperDOT limit orders are received systemically. This is a change to the Exchange's current practice whereby specialists are responsible for disseminating bids and offers. Proposed NYSE rule 60 would provide that the Exchange will ''autoquote'' the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange would then autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price.[14]

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares or more on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 (''Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation'') would be amended to provide that a NYSE Direct+® (''NYSE Direct+'') order[15] equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.[16] The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer also suggests a need to amend Supplementary Material .30 to NYSE rule 123A (''Miscellaneous Requirements'') to enable specialists to trade percentage orders against incoming SuperDOT orders.[17] With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot ''reach across the market'' to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE rule 123A.30 to permit specialists to ''reach across the market'' with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than $500,000.[18]

C. NYSE Liquidity Quote Service Agreements

Liquidity Quote would be part of the NYSE OpenBook data feed service.[19] Recipients of the Liquidity Quote data would be subject to the terms of the existing NYSE ''vendor'' agreement, and end-users that receive the Liquidity Quote data from vendors or broker-dealers would continue to be subject to the existing ''subscriber'' agreement. The vendor agreement generally authorizes a data feed recipient to provide a display of the Liquidity Quote data for retransmission, or to distribute the Liquidity Quote data internally.[20] The vendor agreement prohibits data feed recipients from enhancing, integrating, or consolidating its market data with data from other market centers for retransmission.[21] In addition, NYSE has imposed a ''window requirement'' as part of its service agreements, which requires that the Liquidity Quote data be displayed in a separate window, or with a line drawn between its data and other markets' data.[22]

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[12] *See supra* note .

[13] The Exchange proposes that if a specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders will be executed in accordance with the Exchange's procedures for the execution of XPress orders. Both orders will also be exposed to the trading crowd for price improvement. Those portions of the orders that do not receive price improvement will be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

[14] NYSE Rule 60 would also be amended to provide that autoquoting will include: (i) adding size to the best and liquidity bids/offers as additional limit orders are received; and (ii) reducing the size of the best and liquidity bids/offers as limit orders on the book are executed or cancelled. However, the Exchange notes that *de minimis* increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.

[15] NYSE Direct+ provides for the automatic execution of limit orders of 1099 shares or less against the Exchange's disseminated bid or offer. *See* NYSE Rules 1000–1005.

[16] *See* Amendment No. 2, *supra* note 5.

[17] Currently, specialists may bid or offer (within $0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not ''reach across the market'' to trade a percentage order against a bid or offer in a ''destabilizing'' transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least $500,000.

[18] According to the Exchange, specialists could not ''reach across the market'' more than $0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This $0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

[19] For further details on the NYSE OpenBook service, *see* Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 66491 (December 14, 2001) (SR–NYSE–2001–42).

[20] For further details on the vendor and subscriber agreements, *see id.* (''Order Approving a Proposed Rule Change by NYSE Establishing the Fees for NYSE OpenBook'').

[21] *See* NYSE Letter, at 3 (stating in FN2, ''[o]ur vendor contacts provide: '[Vendor] shall not cause * * * the displays of [NYSE Depth] Information that [Vendor] provides to [end-users] to be integrated with other market information that any source other than NYSE makes available [For example, Vendor] shall not permit the displays * * * to be consolidated with limit orders [of] any other market * * *'').

[22] *Id.,* at FN2 (''* * * Vendor [may display] one or more other entities' limit orders side-by-side

III. Summary of Comments

The Commission received 12 comment letters on the proposal.[23] All of the commenters generally supported the idea of NYSE's Liquidity Quote proposal. The commenters believed that with the advent of decimalization, the highest bid and lowest offer no longer reflects the true depth of the market. However, there were several issues raised by the commenters regarding the form and use of Liquidity Quote data.

First, four commenters believed that the Commission should require the NYSE to submit for public comment the vendor and subscriber agreements for the Liquidity Quote service or, at minimum, a description of the relevant terms of the agreements for Commission review.[24] Three commenters believed that the contracts constituted SRO rules and, as such, the contracts should be filed as a proposed rule change for Commission approval, pursuant to section 19(b)(2) of the Act.[25]

Second, three commenters also believed that the restrictions of the vendor agreements are inconsistent with sections 6 and 11A of the Exchange Act.[26] Specifically, the commenters opposed NYSE's contractual restrictions on the integration, display, and redistribution of Liquidity Quote data, and stated that the restrictions were inconsistent with the standards of a national market system set forth in section 11A of the Exchange Act because access to this ''critical'' data should be offered on a reasonable and nondiscriminatory basis.

Third, three commenters said that the downstream restrictions of NYSE's vendor agreements would create a bifurcated market for data and transparency. These commenters believe that large broker-dealers would have the internal ability to reformat the NYSE data feed and take full advantage of the Liquidity Quote data. Conversely, small- and medium-sized broker-dealers that lack the internal resources to reformat the Liquidity Quote data feed would have to rely on market data vendors. The commenters concluded that the downstream restrictions of NYSE's vendor agreements impose unfair access restrictions on small- and medium-sized market participants that are financially unable to purchase a data feed directly from the NYSE and thus rely on vendors to provide this market information for a reasonable fee.[27]

Fourth, one commenter asserted that the downstream restrictions prevent market data vendors from providing value-added services to their customers, in contravention of the Display Rule.[28] This commenter believed that enhancing the format of the Liquidity Quote data and integrating it with data from other markets, or with analytics that use the data, would create a more useful product available for redistribution to its customers.[29] The commenter also believed that the vendor restrictions on integration are anticompetitive in contravention of section 6(b)(8) of the Exchange Act,[30] in that they impair other market centers from viewing Liquidity Quotes in tandem with the consolidated quote display, and inhibit competition with the NYSE for order flow in NYSE-listed securities.[31]

In response to the commenters' concerns about the Liquidity Quote data restrictions, NYSE stated that it intends to compete in the market for finished data products by producing and disseminating a distinguishable product identified to the NYSE. Therefore, to preserve NYSE's branding goal of an independent display of depth data, the NYSE's vendor agreements restrict the integration of Liquidity Quote data with other markets' data and preclude a vendor from displaying rows or columns of other markets' data intermingled with Liquidity Quote data.

In response to commenters concerns regarding vendors' ability to provide value-added services to its customers, NYSE argued that the Commission should not prohibit NYSE from restricting the way in which vendors can package Liquidity Quote data. NYSE asserted that such restrictions allow the NYSE to compete with vendors in the market for finished data products, as well as compete with the other market centers for sizeable order flow. In addition, NYSE stated that the integration of Liquidity Quote data with other markets' quotation information would be misleading, in that its firm and executable liquidity bid or offer would be commingled with ''fleeting'' 100-share best bids and offers of its competitors.

IV. Discussion

Section 19(b) of the Act[32] requires the Commission to approve the proposed rule change filed by the NYSE if the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review, the Commission finds, for the reasons discussed below, that NYSE's proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, but only if the NYSE does not apply the restrictions on data integration currently contained in the vendor agreements.[33]

Specifically, the Commission finds that the Liquidity Quote proposal, when viewed apart from the vendor agreements, is consistent with sections 6(b)(5)[34] and 6(b)(8)[35] of the Act. Section 6(b)(5) of the Act[36] requires, among other things, that the rules of NYSE be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(8) of the Act[37] requires, among other things, that the Exchange's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Liquidity Quote proposal, when viewed apart from the NYSE vendor agreements, will substantially increase the amount of information available to the public and market participants with respect to quotations for, and transactions in, certain specified securities listed on the Exchange, consistent with sections 6(b)(5) and 6(b)(8) of the Act. In a decimal market environment, the highest bid and lowest offer of an exchange may not reflect where the actual market is, particularly for sizeable orders, because the increase in the number of price increments causes less depth to be available at each price point. Accordingly, the dissemination, in selected securities, of a liquidity bid or offer reflecting NYSE aggregate trading interest, including limit orders, trading crowd interest, and

with, or on the same page as, displays of OpenBook Information.'').

[23] *See supra* note 6.

[24] *See* Schwab Letter; Bloomberg Letter II; CSE Letter; and Bloomberg Letter III.

[25] 15 U.S.C. 78s(b). *See* Bloomberg Letter I, II, III; CSE Letter; and Schwab Letter.

[26] Schwab Letter; Bloomberg Letter II; and CSE Letter.

[27] *Id.* The Schwab and Bloomberg II Letters also noted that the fees charged to retail investors for liquidity quote data are unduly excessive, discriminatory, and anticompetitive. *See* Schwab Letter and Bloomberg Letter II.

[28] 17 CFR 240.11Ac1–2. *See* Bloomberg Letter II.

[29] Bloomberg Letter II.

[30] 15 U.S.C. 78f(b)(8).

[31] Bloomberg Letter II.

[32] 15 U.S.C. 78s(b).

[33] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(8).

specialist proprietary interest, at a price interval below the best bid (in the case of a liquidity bid), or above the best offer (in the case of a liquidity offer), is consistent with the protection of investors and the public, when viewed apart from the NYSE vendor agreements.[38]

However, nine commenters criticized the provisions of the NYSE's vendor and subscriber agreements for Liquidity Quote that preclude data feed recipients from enhancing, integrating, or consolidating its market data with data from other market centers for retransmission. While these agreements have not been filed with the Commission under section 19(b)(2) of the Act,[39] because these comments directly relate to the manner in which the Liquidity Quote proposal will operate, the Commission believes that it can and must consider these comments in determining whether, or on what terms, to approve or institute disapproval proceedings with respect to the Liquidity Quote proposal. In other words, in assessing whether the Liquidity Quote is consistent with the requirements of section 6, we must measure against the standards of section 6, not only the literal terms of the Liquidity Quote proposal, but also the operation of Liquidity Quote as governed by the provisions of the vendor agreements.

Section 6(b), in pertinent part, requires that the Liquidity Quote proposal, viewed in the context of the restrictions contained in the vendor agreements, (1) ''foster cooperation and coordination with persons engaged in * * * processing information with respect to, and facilitating transactions in securities;''[40] (2) ''remove impediments to and perfect the mechanism of a free and open market and a national market system;''[41] (3) not be ''designed to permit unfair discrimination between customers; * * *''[42] and (4) ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.''[43] With respect to the first two considerations, we look for guidance to section 11A.

Section 11A of the Act[44] provides the Commission with broad powers over exclusive processors of market information[45] and thus the Commission is responsible for assuring that exclusive processors function in a manner that is neutral with respect to all market centers, all market makers, and all private firms.[46] In particular, section 11A(a)(1)(C)(ii) and (iii) of the Act[47] direct the Commission, in the interest of the public, for the protection of investors and maintenance of fair and orderly markets, to assure: (1) the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities; and (2) fair competition among brokers and dealers, among exchange markets, and between exchange and other markets.[48] The NYSE proposes to disseminate its Liquidity Quota data on a voluntary basis; however, even absent a Commission rule requiring dissemination, if the NYSE chooses to disseminate Liquidity Quote data, it must do so on terms that are fair and not unreasonably discriminatory, and in accordance with the objectives of a national market system, as provided by section 11A of the Act.[49]

In this context, the Commission is concerned that the restrictions in the vendor agreements that preclude vendors from providing an enhanced, integrated, or consolidated data product to customers raise such significant fair and reasonable access issues under section 11A of the Act for data recipients, as to preclude the NYSE from disseminating Liquidity Quote data in a manner consistent with the statute.

Specifically, the Commission is concerned that the restrictions in the vendor agreements on the use and form of Liquidity Quote data are not fair to market data vendors because they will be prevented from integrating or commingling Liquidity Quote data with data from other markets. This restriction may be particularly unfair and unreasonably discriminatory to customers of vendors whose businesses

[38] The NYSE has represented that in some cases, depending on the depth of market, the NYSE best bid or offer and the liquidity bid or offer may converge, in which case, the NYSE will make available the same price and size both as the best bid (offer) over CQS, and the liquidity bid (offer) over the Exchange's CAP line. The Commission notes that liquidity bids and offers will be deemed firm quotations, subject to the firm quoting obligations of Rule 11Ac1–1(c) under the Act. 17 CFR 240.11Ac1–1(c). In addition, the Commission notes that orders seeking to trade against liquidity bids (offers) will be executed in accordance with NYSE's current auction market procedures, in particular, with respect to the handling of market orders, limit orders, and XPress orders.

[39] 15 U.S.C. 78s(b)(2). Because of the manner in which the Commission is disposing of this matter, the Commission need not decide whether the NYSE agreements at issue here or similar such agreements should be filed under section 19(b)(2) of the Act. In this connection, we note, however, that commenters have not been precluded from commenting on these agreements in the absence of such a filing and the Commission is able to, and indeed required to, take these comments into account to the extent that they relate to the manner in which the proposal that has been filed with the Commission will operate.

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

[42] *Id.*

[43] *See also* 15 U.S.C. 78f(b)(8).

[44] 15 U.S.C. 78k–1.

[45] The Commission notes that the NYSE would be operating the Liquidity Quote service as an ''exclusive processor.'' An ''exclusive processor'' is defined in section 3(a)(22)(B) of the Act as ''any SIP or SRO that, directly or indirectly, engages on an exclusive basis, in collecting, processing, or distributing the market information of an SRO.'' 15 U.S.C. 78c(a)(22)(B). A Securities Information Processor (''SIP'') is defined in section 3(a)(22)(A) of the Act as ''any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing * * * on a current and continuing basis, information with respect to such transactions or quotations * * * .'' 15 U.S.C. 78c(a)(22)(A).

[46] There is no indication in section 11A and its legislative history that self-regulatory organizations (''SROs'') acting as SIPs should be treated differently under the section because of the Commission's separate statutory authority under section 19(b). Therefore, section 19(b) review does not limit the Commission's authority under section 11A.

[47] 15 U.S.C. 78k–1(a)(1)(C)(ii) and (iii).

[48] In enacting the Securities Acts Amendments of 1975 (''1975 Act Amendments''), Congress specifically recognized that the securities markets are dynamic and change over time and, therefore, specifically rejected mandating the specific components of the national market system. Instead, Congress granted the Commission broad authority to oversee its implementation. *See* S. Rep. No. 75, 94th Cong., 1st Sess. (1975) (''Senate Report''). The 1975 Act Amendments added section 11A ''to bring under the SEC's direct jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities.'' *Id.,* at 9–10. As a result, the 1975 Act Amendments greatly expanded the Commission's authority to regulate the national market system and matters related to the dissemination of market information.

The goals of this new authority were ''to insure the availability of prompt and accurate trading information, to assure that these communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Act.'' *Id.* The Commission's broad authority ''includes all powers necessary to ensure the regulation of the securities information processing activities of [the] exchanges and associations in the same manner and to the same extent as the Commission may regulate securities information processors registered and regulated under new section 11A(b).'' *Id.,* at 10.

Moreover, Congress noted that the Commission's authority under section 11A of the Exchange Act includes the authority to regulate ''what and how information is displayed and qualifications for the securities to be included on any tape or within any quotation system.'' *Id.,* at 11. Legislative history for section 11A states that ''it is critical for those who trade to have access to up-to-the-second information as to the prices at which transactions in particular securities are taking place (*i.e.*, last sale reports) and the prices at which other traders have expressed their willingness to buy or sell (*i.e.*, quotations).'' *Id.,* at 9.

[49] *See e.g.,* Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 (April 24, 1984).

primarily consist of packaging quotation information from all reporting market centers on a consolidated basis for sale to customers. Such customers seek to avoid the costs of desktop integration, and the NYSE restrictions would impose integration costs that smaller users of market data may be unable to bear.[50]

In addition, the Commission believes that restrictions on integration of data such as Liquidity Quote are likely to be more troublesome than restrictions on integration for products such as NYSE OpenBook.[51] OpenBook contains only a display of orders left with the specialist, while Liquidity Quote reflects orders in the book, interest in the crowd, and the specialist's own interest at a price and size usually different than the NYSE's best bid or offer. In other words, Liquidity Quote differs from OpenBook in that it: (1) Represents the NYSE's market-wide price for a specific size, not just a subset of orders on the NYSE; and (2) immediately may be executed against. The Commission believes that preventing vendors from integrating quotations of this type with quotations from other markets is a more substantial restriction on the ability of vendors to provide useful market data than posed by OpenBook and would, unlike OpenBook, impose on users integration costs with respect to immediately executable, market-wide quotations in a manner that would: (1) Be inconsistent with fostering ''cooperation and coordination with persons engaged in processing information with respect to * * * securities;''; (2) ''be ''designed to permit unfair discrimination between customers;'' and (3) impede, rather than remove impediments to, a ''free and open market and a national market system.'' [52]

The Commission also believes that the restrictions on integrating Liquidity Quote data and only permitting the data to be displayed in a separate window raise substantial concerns about burdens on competition, which may be inconsistent with section 6(b)(8) of the Act. In particular, the Commission believes that in the case of other market centers, the restrictions likely could inhibit competition with the NYSE for order flow in NYSE-listed securities because Liquidity Quote data is precluded from being viewed in tandem with the consolidated quote display. In addition, the Commission is concerned that the restrictions may be anticompetitive as to small- and medium-sized market participants that are unable to choose useful formats to view the Liquidity Quote data.

The NYSE argues that these restrictions are designed to maintain the integrity of its data so that it is uniquely identified to the NYSE. We are not persuaded by this argument. We believe that a less restrictive labelling requirement, such as one that simply would require the clear identification of the data as the NYSE Liquidity Quote, might well achieve the stated objective. The Commission believes that whatever ownership interests the NYSE may have in these data cannot be asserted in a manner inconsistent with the requirements of sections 6(b)(5) and 6(b)(8). The Commission believes that there is a substantial question as to whether, to be consistent with these standards, Liquidity Quote should be provided in a way that allows data feed recipients to be able to enhance, integrate or consolidate Liquidity Quote data in a reasonable format.[53]

While it is arguable that an SRO may restrict the integration of some information that is not required by current SEC rules to be disseminated in a consolidated format, the Commission believes it is also arguable that, at a minimum, where a market chooses to disseminate quotation data that is immediately executable and represents a market's entire interest at a particular price such market data should be consolidatable.[54] The NYSE argues that as owner of this data, it has the legal right to ''brand'' this data and, in order to preserve its brand, it must be able to restrict integration of this data with other data. The Commission preliminarily believes that the better view of section 11A is that these statutory provisions preclude the NYSE, once it makes the decision to disseminate this data, from asserting whatever property rights it may have to this data in a way that unfairly and unreasonably limits vendor and investors access and use of this data and has a negative effect on intermarket competition in NYSE listed securities.

The Commission, therefore, is approving this proposal on the condition that the proposed rule change is not effective until the NYSE accepts the condition to remove from its contracts the prohibition on the ability of data feed recipients, including vendors, to integrate the data with the display of other markets' data, and demonstrates its acceptance of the condition to the Commission. If the NYSE accepts the condition, it must do so by the close of business on April 9, 2003. If the NYSE accepts the condition, it may not implement the Liquidity Quote Proposal until the prohibition is removed from its vendor contracts.

If by the close of business on April 9, 2003, the NYSE has not demonstrated

[50] Desktop integration requires certain infrastructure, such as data storage and application installation and maintenance, that many small users currently do not directly bear. Such smaller users often take advantage of the economies of scale offered by data vendors that provide integration at a central location.

[51] For further details on the NYSE OpenBook service, *see* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001). In its order approving the NYSE's OpenBook service, the Commission stated that ''NYSE's * * * restrictions on vendor redissemination of OpenBook data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data found in these agreements are on their face discriminatory, and may raise fair access issues under the Act.''

[52] *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5). In the context of the Liquidity Quote proposal, we have received comment from a more diverse array of commenters and have received more information about the potential negative transparency and competitive effects, and effects on smaller market data users, than we received in response to publication of the OpenBook proposal. We also have had the advantage of experience with the operations of the restrictions on the dissemination of the OpenBook product, which shows that our expectation, as expressed in our cautionary statement in the OpenBook order, *see* note 51, *supra,* that the market would challenge these types of vendor agreement restrictions, has not been fulfilled. The Commission has a statutory responsibility to balance the statutory goals of facilitating the provision of more quotation information to the market with the goals of ensuring that quotations information is provided in a fair way and in a way that does not unreasonably burden competition. In conducting this balance, as we have done here with respect to the Liquidity Quote proposal, we must take into account all the information provided to us by commenters and by market experience. The additional experience we have with respect to the failure of market forces to act to address the anti-competitive nature of the vendor contracts in the context of the OpenBook proposal further informs and reinforces our decision here.

[53] The Commission believes that it would be reasonable and consistent with the statute for the NYSE to require that data feed recipients who choose to provide a value-added liquidity quote data package to: (i) Give the NYSE attribution next to any integrated quote that includes NYSE data; and (ii) make available to customers NYSE's liquidity quote product as a separate branded package.

[54] The NYSE believes that the Commission is ''extend[ing] the consolidated Display Rule to NYLQ [or Liquidity Quote].'' *See* Grasso (NYSE) Letter, at 2. The NYSE argues, in referencing the ''Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change,'' September 14, 2001 (''Seligman Report''), that the Seligman Report concluded that such data should be free from ''mandatory consolidation requirements.'' *See id.* (citing, the Seligman Report). The Commission is not mandating that the NYSE consolidate its Liquidity Quote data with that of other markets. The Commission does believe, however, that the Liquidity Quote data should be disseminated in a consolidatable format—*i.e.*, vendors and investors should not be precluded from opting to consolidate the Liquidity Quote data. Contrary to the NYSE's views, the Seligman Report did not recommend that markets be able to make their own market data non-consolidatable; the Seligman Report recommended that markets no longer be required to centrally consolidate their data.

its acceptance of the condition to the Commission, the Commission will issue an order beginning proceedings to disapprove the proposed rule change, pursuant to section 19(b)(2)(B) of the Act.[55]

V. Conclusion

It is ordered, pursuant to section 19(b)(2) of the Act,[56] that the proposed rule change (SR–NYSE–2002–55), as amended, is approved, on the condition that the proposed rule change will not be effective unless the NYSE demonstrates to the Commission by April 9, 2003 that it has accepted the condition that it remove from its vendor agreements the prohibition on data feed recipients, including vendors, from integrating Liquidity Quote data with other markets' data or with the display of other markets' data, provided however that the NYSE may require that vendors provide the NYSE attribution in any display that includes Liquidity Quote and also may require vendors that purchase the Liquidity Quote product to make Liquidity Quote available to their customers as a separate branded package.

It is further ordered that the Liquidity Quote Proposal may not be implemented until the prohibition is removed from the NYSE's vendor agreements.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8441 Filed 4–7–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47610; File No. SR–PCX–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Regarding Firm Quotation Size

April 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing firm quotations in order to provide that all PCX quotations will be firm for all incoming customer and broker-dealer orders for their full disseminated size pursuant to PCX rule 6.86(b)(2). The text of the proposed rule change is available at the Office of the Secretary, PCX and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide that all PCX quotations will be firm for all incoming customer and broker-dealer orders for their full disseminated size pursuant to PCX rule 6.86(b)(2). This will allow the Exchange to provide customers and broker-dealers an opportunity to receive executions up to the full disseminated size beyond the one contract minimum that the Exchange's current rule provides for broker-dealer orders. As proposed, absent unusual market conditions as set forth in PCX rule 6.86(d), each Responsible Broker or Dealer[3] is obligated to be firm for all incoming orders in a listed option series in an amount up to the full disseminated size.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act, in general, and further the objectives of section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(i) of the Act[6] and subparagraph (f)(6) of rule 19b–4 thereunder.[7] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and rule 19b–4 thereunder.

A proposed rule change filed under rule 19b–4(f)(6)[8] normally does not become operative prior to thirty days after the date of filing. However, pursuant to rule 19b–4(f)(6)(iii), the Commission may designate a shorter

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[55] 15 U.S.C. 78s(b)(2)(B).

[56] 15 U.S.C. 78s(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Responsible Broker or Dealer'' means that, with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker and any registered Market Makers constituting the trading crowd in such option series will collectively be the ''Responsible Broker or Dealer'' to the extent of the aggregate quotation size specified. *See* PCX Rule 6.86(a)(2).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 15 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[9] Waiving the pre-filing requirement and accelerating the operative date will provide investors increased liquidity. Further, the Commission notes that on January 21, 2003 it approved a similar proposed rule change submitted by the International Securities Exchange, Inc. (''ISE''), which requires ISE quotations to be firm for published sizes for all orders entered by ISE members regardless of whether the orders are for the accounts of customers or broker-dealers.[10] For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–12 and should be submitted by April 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[9] For purposes of accelerating the operative date of this proposal only, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Securities Exchange Act Release No. 47220, 68 FR 4260 (January 28, 2003) (ISE–2002–24).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9U63]

State of Florida (And Contiguous Counties in Alabama)

Bay, Brevard, Broward, Charlotte, Citrus, Dade, Duval, Franklin, Gulf, Hillsborough, Okaloosa, Santa Rosa and Taylor Counties and the contiguous counties of Baker, Calhoun, Clay, Collier, DeSoto, Dixie, Escambia, Glades, Hardee, Hendry, Hernando, Highlands, Indian River, Jackson, Jefferson, Lafayette, Lee, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, Seminole, St. Johns, Sumter, Volusia, Wakulla, Walton and Washington in the State of Florida; and Covington and Escambia counties in the State of Alabama constitute an economic injury disaster loan area as a result of freezing temperatures beginning November 2002 and continuing through February 2003. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 2, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.324 percent.

The numbers assigned for economic injury for this disaster are 9U6300 for Florida; and 9U6400 for Alabama.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 2, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8531 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3484]

State of Georgia

Mitchell County and the contiguous counties of Baker, Colquitt, Decatur, Dougherty, Grady, Thomas and Worth in the State of Georgia constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on March 20, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 30, 2003 and for economic injury until the close of business on December 31, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—5.875%
Homeowners without credit available elsewhere—2.937%
Businesses with credit available elsewhere—6.378%
Businesses and non-profit organizations without credit available elsewhere—3.189%
Others (including non-profit organizations) with credit available elsewhere—5.500%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—3.189%

The number assigned to this disaster for physical damage is 348412 and for economic damage is 9U5700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 31, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8512 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3482]

State of Kentucky (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, effective March 27, 2003, the above numbered declaration is hereby amended to include Anderson, Clay, Elliott, Estill, Knox, Lawrence, Magoffin, Mason, Menifee, Morgan, Nicholas, Powell, Rowan, and Woodford Counties in the

State of Kentucky as a disaster area due to damages caused by severe winter ice and snow storms, heavy rain, flooding, tornadoes, and mud and rock slides occurring on February 15 through February 26, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bath, Bracken, Franklin, Harrison, Laurel, Mercer, Nelson, Robertson, Shelby, Spencer, Washington, and Whitley in the State of Kentucky and Brown County in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 28, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–8513 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9U61]

State of Massachusetts (And Contiguous Counties in New Hampshire)

Essex County and the contiguous counties of Middlesex and Suffolk in the State of Massachusetts; and Hillsborough and Rockingham Counties in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on February 20, 2003 in Marblehead, Massachusetts. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on December 31, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.189 percent.

The numbers assigned for economic injury for this disaster are 9U6100 for Massachusetts; and 9U6200 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 31, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8510 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P008]

State of North Carolina

As a result of the President's major disaster declaration for Public Assistance on March 27, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Alamance, Caswell, Forsyth, Granville, Guilford, Orange, Person, Rockingham and Stokes Counties in the State of North Carolina constitute a disaster area due to damages caused by an ice storm occurring on February 27, 2003 and continuing through February 28, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 27, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Non-Profit Organizations without Credit Available Elsewhere—*3.189%*

Non-Profit Organizations with Credit Available Elsewhere—*5.500%*

The number assigned to this disaster for physical damage is P00811.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: March 31, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–8509 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3481]

State of Ohio (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 1, 2003, the above numbered declaration is hereby amended to include Gallia and Meigs Counties as disaster areas due to damages caused by a severe winter storm and record snow occurring on February 14, 2003, and continuing through March 18, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Athens in the State of Ohio; and Jackson, Mason and Wood Counties in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 1, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–8532 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster 3485]

Commonwealth of Virginia

As a result of the President's major disaster declaration on March 27, 2003, I find that Buchanan, Dickenson, Montgomery, Russell, Tazewell and Wise Counties and the Independent Cities of Norton, Roanoke and Salem in the Commonwealth of Virginia constitute a disaster area due to damages caused by a severe winter storm, record snowfall, heavy rain, flooding and mudslides occurring on February 15 through February 28, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 27, 2003 and for economic injury until the close of business on December 29, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Craig, Floyd, Giles, Lee, Pulaski, Roanoke, Scott, Smyth and Washington in the Commonwealth of Virginia; Harlan, Letcher and Pike counties in the State of Kentucky; Mercer, McDowell and Mingo counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	6.378
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.189
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.189

The number assigned to this disaster for physical damage is 348511. For economic injury the number is 9U5800 for Virginia; 9U5900 for Kentucky; and 9U6000 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 28, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–8511 Filed 4–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4331]

Culturally Significant Objects Imported for Exhibition Determinations: ''Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that three additional objects to be included in the exhibition, ''Illuminating the Renaissance: The Triumph of Flemish Manuscript Painting in Europe,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about June 17, 2003, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 1, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, , Department of State.

[FR Doc. 03–8541 Filed 4–7–03; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–ABE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 8, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Lewullis, of the Lehigh-Northampton Airport Authority at the following address: 3311 Airport Road, Allentown, PA 18109–3040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northampton Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 4, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lehigh-Northampton Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 2003.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: March 1, 2005.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,102,115.

Brief description of proposed project(s): Loading Bridges—Post Concourse.

Loading Bridges—RJ Modifications.

Design and Construct Electrical Airfield Vault.

Design and Construct ARFF Building.

Airfield Security Perimeter Fencing.

RPZ Land Acquisition R/W 24 and Hangar Land.

Noise Mitigation—Sound Insulation (Phase II).

Land Acquisition R/W 6–24 Noise.

Design and Construct Air Cargo Apron—Phase II.

Noise Mitigation—Sound Insulation.

Taxiway A Rehabilitation.

General Aviation Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the Lehigh-Northampton Airport Authority.

Issued in Camp Hill, PA on March 31, 2003.

John B. Carter,

Acting Manager, HAR–ADO, Eastern Region.

[FR Doc. 03–8572 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 30]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''ARSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Tuesday, May 20, 2003.

ADDRESSES: The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''ARSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Tuesday, May 20, 2003. The meeting of the RSAC will be held at the Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005, (202) 842–1300. All times noted are eastern standard time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC meeting topics will include a final briefing on a draft Cab Noise NPRM, if available as a consensus recommendation from the Cab Working Conditions Working Group, in anticipation of a forthcoming mail ballot. The committee will be asked to accept a task for revision and supplementation of Safety Standards for Rail Passenger Service. Finally, FRA will introduce to the Committee a requirement concerning a new Congressionally-mandated study of the cost and benefits of Positive Train Control (PTC) that appears to fall within existing task statements (Nos. 97–4 and 97–5); and the Committee will be asked to authorize consideration of this issue by the PTC Working Group.

In addition to these items of business, the Committee will receive briefings on the following topics: Security update; hazardous materials transportation next steps; development of a new Highway-Rail Crossing/Action Plan; Transport Canada's programs for highway-rail crossing safety and access control; and the Safety Assurance and Compliance Program.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.&fnl;gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Issued in Washington, DC, on April 3, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–8522 Filed 4–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–850X]

St. Croix Valley Railroad Company—Abandonment and Discontinuance of Service Exemption—in Pine and Kanabec Counties, MN

On March 19, 2003, St. Croix Valley Railroad Company (SCXY) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to: (1) Abandon its rail easement over a line of the Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 58.3 at Mora Junction (Brook Park) and milepost 47.6 at Mora, a distance of 10.7 miles;[1] and (2) discontinue rail service pursuant to overhead trackage rights over a rail line of BNSF between Hinckley and Mora Junction (Brook Park), a distance of 8.2 miles, in Pine and Kanabec Counties, MN. The line traverses United States Postal Service zip codes 55007, 55037, and 55051. There are three stations on the line.

The line contains Federally granted rights-of-way. Any requests for documentation should be made to BNSF as the owner of the line.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 7, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 28, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–850X and must be sent to: (1) Surface

[1] According to SCXY, this segment was embargoed, effective July 22, 2002, due to unsafe track conditions.

Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1194. Replies to the SCXY petition are due on or before April 28, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8521 Filed 4–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No 630X)]

CSX Transportation, Inc.—Abandonment Exemption—in Sumner County, TN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.43-mile line of railroad between milepost OCN–162.57 and milepost OCN–163.00 in Gallatin, Sumner County, TN. The line traverses United States Postal Service Zip Code 37066.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R.Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 8, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 18, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 28, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 11, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 8, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 26, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–7953 Filed 4–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently, the IRS is soliciting comments concerning Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income

Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residential Interest Holder of REMIC Taxable Income or Net Loss Allocation.

DATES: Written comments should be received on or before June 9, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Time Per Respondent: 154 hours, 22 minutes.

Estimated Total Annual Burden Hours: 758,989.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8295 Filed 4–7–03; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register

Vol. 68, No. 67

Tuesday, April 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

RIN 0570–AA30

Methodology and Formulas for Allocation of Loan and Grant Program Funds

Correction

In rule document 03–7237 beginning on page 14527 in the issue of Wednesday, March 26, 2003 make the following correction:

§ 1940.593 [Corrected]

On page 14528, in the second column, in § 1940.593, after paragraph (f), the next paragraph ''(a)'' should read ''(g)''.

[FR Doc. C3–7237 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, and International Business Services, Ltd. and Top Oil Tools, Ltd.

Correction

In notice document 03–7858 beginning on page 15982 in the issue of Wednesday, April 2, 2003, make the following correction:

On page 15982, in the first column, the subject line is corrected to read as set forth above.

[FR Doc. C3–7858 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 164

[CMS–0049–F]

RIN 0938–AI57

Health Insurance Reform: Security Standards

Correction

In rule document 03–3877 beginning on page 8334 in the issue of Thursday, February 20, 2003 make the following correction:

§ 164.306 [Corrected]

On page 8377, in the first column, in § 164.306, after paragraph (d)(2), the next paragraph ''(1)'' should read ''(3)''.

[FR Doc. C3–3877 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14352; Airspace Docket No. 00–AGL–25]

Modification of Class E Airspace; Hazen, ND

Correction

In rule document 03–7662 beginning on page 15348 in the issue of Monday, March 31, 2003 make the following corrections:

§ 71.1 [Corrected]

1. On page 15349, in the first column, in §71.1, under the heading **AGL ND E5 Hazen, ND [Revised]**, in the 13th line, ''countercloskwise'' should read ''counterclockwise''.

2. On the same page, in the same column, in the same section, under the same heading, in the 21st line, ''long. 102° 24′ 00″W., '' should read ''long. 102° 34′ 00″ W.,''.

[FR Doc. C3–7662 Filed 4–7–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 8, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Seven Bexar County, Texas, Invertebrate Species; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Seven Bexar County, TX, Invertebrate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for seven endangered invertebrate species found in Bexar County, Texas, pursuant to the Endangered Species Act of 1973, as amended (Act). The critical habitat designation totals approximately 431 hectares (1,063 acres) in 22 units. Section 7 of the Act requires Federal agencies to ensure, in consultation with the Service, that actions they authorize, fund, or carry out are not likely to result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation. As a result of comments and information received, we are not designating critical habitat as originally proposed for two species that occur entirely on State-owned lands that are subject to a conservation plan.

DATES: This rule becomes effective on May 8, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Robert Pine, Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, at the above address (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The seven species for which we are designating critical habitat in this rulemaking inhabit caves or other features known as karst. The term ''karst'' refers to a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes, and the bedrock resembles a honeycomb.

As a result of climatic changes beginning two million years ago and lasting until ten thousand years ago, invertebrate species colonized caves and other subterranean voids (Barr 1968; Mitchell and Reddell 1971; Elliott and Reddell 1989). Species that dwell exclusively in caves and other subterranean voids are referred to as ''troglobites.'' Through faulting and canyon downcutting, the karst terrain colonized by these species along the Balcones Fault Zone (a zone approximately 25 kilometers (km) in width, extending from the northeast corner of Bexar County to the western edge of the County) became increasingly dissected, creating ''islands'' of karst and barriers to dispersal. These ''islands'' isolated troglobitic populations from each other, probably resulting in further speciation.

The following nine Bexar County, Texas, troglobitic invertebrate species were listed as endangered on December 26, 2000 (65 FR 81419): spider (no common name) (*Cicurina venii*), Robber Baron Cave harvestman (*Texella cokendolpheri*), vesper cave spider (*Cicurina vespera*), Government Canyon cave spider (*Neoleptoneta microps*), Madla's cave spider (*Cicurina madla*), Robber Baron cave spider (*Cicurina baronia*), beetle (no common name) (*Rhadine exilis*), beetle (no common name) (*Rhadine infernalis*), and Helotes mold beetle (*Batrisodes venyivi*). These are karst dwelling species of local distribution in north and northwest Bexar County. They spend their entire lives underground.

Since publication of the listing final rule, the common names for the following six arachnid species have been changed as a result of a meeting of the Committee on Common Names of Arachnids of the American Arachnological Society in 2000. Accordingly, we are changing the common names of the species currently in the list of Endangered and Threatened Wildlife (50 CFR 17.11) as Robber Baron Cave harvestman, Robber Baron cave spider, Madla's cave spider, vesper cave spider, Government Canyon cave spider, and one with no common name (*Cicurina venii*) to Cokendolpher cave harvestman, Robber Baron Cave meshweaver, Madla Cave meshweaver, Government Canyon Bat Cave meshweaver, Government Canyon Bat Cave spider, and Braken Bat Cave meshweaver, respectively.

Individuals of the listed species are small, ranging in length from 1 millimeter (0.039 inch (in)) to 1 centimeter (0.39 in). They are eyeless, or essentially eyeless, and most lack pigment. Low quantities of food in caves have caused adaptations in these species, including low metabolism, long legs for efficient movement, and loss of eyes, possibly as an energy-saving trade-off (Howarth 1983). Survival may be possible from months to years with little or no food (Howarth 1983). Adult *Cicurina* spiders have survived in captivity without food for about 4 months (James Cokendolpher, Museum of Texas Tech University, pers. comm. 2002).

Although little is known about the life history of listed Texas troglobitic invertebrates, they are believed to live for longer than 1 year. This belief is based, in part, on the amount of time some juveniles have been kept in captivity without maturing (Veni and Associates 1999; James Reddell, Texas Memorial Museum, pers. comm. 2000). For example, James Cokendolpher (Museum of Texas Tech University, pers. comm. 2002) maintained a juvenile troglobitic *Cicurina* spider from May 1999 through April 2002. Reproductive rates of troglobites are typically low (Poulson and White 1969; Howarth 1983). According to surveys conducted by Culver (1986), Elliott (1994a), and Hopper (2000), population sizes of troglobitic invertebrates are typically small, with most species known from only a few specimens (Culver *et al.* 2000).

As described below, the primary habitat requirements of these species include: (1) Subterranean spaces in karst with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and (2) a healthy surface community of native plants and animals that provide nutrient input and, in the case of native plants, act to buffer the karst ecosystem from adverse effects (for example, invasions of nonnative species, contaminants, and fluctuations in temperature and humidity). These karst invertebrates require stable temperatures and constant, high humidity (Barr 1968; Mitchell 1971a) because they are vulnerable to desiccation in drier habitats (Howarth 1983) or cannot detect or cope with more extreme temperatures (Mitchell 1971a). Temperatures in caves typically remain at the average annual surface temperature, with little variation

(Howarth 1983; Dunlap 1995). Relative humidity is typically near 100 percent in caves that support troglobitic invertebrates (Elliott and Reddell 1989). During temperature extremes, the listed species may retreat into small interstitial spaces (human-inaccessible) connected to a cave, where the physical environment provides the required humidity and temperature levels (Howarth 1983). These species may spend the majority of their time in such retreats, only leaving them to forage in the larger cave passages (Howarth 1987).

Since sunlight is absent or present in extremely low levels in caves, most karst ecosystems depend on nutrients derived from the surface either directly (organic material brought in by animals, washed in, or deposited through root masses) or indirectly through feces, eggs, and carcasses of trogloxenes (species that regularly inhabit caves for refuge, but return to the surface to feed) and troglophiles (species that may complete their life cycle in the cave, but may also be found on the surface) (Barr 1968; Poulson and White 1969; Howarth 1983; Culver 1986). Primary sources of nutrients include leaf litter, cave crickets, small mammals, and other vertebrates that defecate or die in the cave.

As described in our final rule to list the nine species (65 FR 81419), the continuing expansion of the human population in karst terrain constitutes the primary threat to the species through: (1) Destruction or deterioration of habitat by construction; (2) filling of caves and karst features and loss of permeable cover; (3) contamination from septic effluent, sewer leaks, runoff, pesticides, and other sources; (4) exotic species, especially nonnative fire ants (*Solenopsis invicta*); and (5) vandalism.

Karst in Bexar County

The northern portion of Bexar County is located on the Edwards Plateau, a broad, flat expanse of Cretaceous carbonate rock that ranges in elevation from 335.5 meters (m) (1,100 feet (ft)) to 579.5 m (1,900 ft) (Veni 1988; Soil Conservation Service 1962). This portion of the Plateau is dissected by numerous small streams and is drained by Cibolo Creek and Balcones Creek. To the southeast of the Plateau lies the Balcones Fault Zone, a 25-km-wide fault zone that extends from the northeast corner of the County to the western County line. The many streams and karst features of this zone recharge the Edwards Aquifer.

The principal, cave-containing rock units of the Edwards Plateau are the upper Glen Rose Formation, Edwards Limestone, Austin Chalk, and Pecan Gap Chalk (Veni 1988). The Edwards Limestone accounts for one-third of the cavernous rock in Bexar County and contains 60 percent of the caves, making it the most cavernous unit in the County. The Austin Chalk outcrop is second to the Edwards in total number of caves. In Bexar County, the outcrop of the upper member of the Glen Rose Formation accounts for approximately one-third of the cavernous rock, but only 12.5 percent of Bexar County caves (Veni 1988). In Bexar County, the Pecan Gap Chalk, while generally not cavernous, has a greater than expected density of caves and passages (Veni 1988).

Veni (1994) delineated six karst areas within Bexar County. The regions were named after places within their boundaries. These karst fauna regions are bounded by geological or geographical features that may represent obstructions to the movement (on a geologic time scale) of troglobites, which has resulted in the present-day distribution of endemic (restricted to a given region) karst invertebrates in the Bexar County area.

These areas have been delineated by Veni (1994) into five zones that reflect the likelihood of finding a karst feature that will provide habitat for the endangered Bexar County invertebrates based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape, and extent of caves with respect to cave development. These five zones are defined as:

Zone 1: Areas known to contain one or more of the nine endangered karst invertebrates;

Zone 2: Areas having a high probability of suitable habitat for the invertebrates;

Zone 3: Areas that probably do not contain the invertebrates;

Zone 4: Areas that require further research but are generally equivalent to zone 3, although they may include sections that could be classified as zone 2 or zone 5; and

Zone 5: Areas that do not contain the invertebrates.

Under contract with the Service, Veni (2002) re-evaluated and, where applicable, redrew the boundaries of each karst zone originally delineated in Veni (1994). Revisions were based on current geologic mapping, further studies of cave and karst development, and the most current information available on the distribution of listed and nonlisted cave-adapted species (Veni 2002).

Endangered Karst Invertebrate Distribution

As of December 2002, 475 caves were known to occur in Bexar County, some of which have been biologically surveyed for listed species (Veni 2002). At least 97 of the 475 caves were sealed or destroyed before they could be biologically surveyed (Veni 2002). Not all of the remaining caves in Bexar County have been adequately surveyed for invertebrates. It is likely that some of these caves will be found to contain one or more of the listed species. When the species were listed as endangered in December 2000, the Service knew of 57 occupied caves. When critical habitat was proposed in Bexar County in August 2002, we knew of 69 occupied caves. We now know of 74 caves containing one or more of the listed species in Bexar County (Table 1). The following species status descriptions are based on information available to us as of December 23, 2002.

Braken Bat Cave Meshweaver

The Braken Bat Cave meshweaver, *Cicurina venii* (Araneae: Dictynidae), was first collected on November 22, 1980, by G. Veni and described by Gertsch (1992). Braken Bat Cave remains the only location known to contain this species (Table 1).

Cokendolpher Cave Harvestman

The Cokendolpher cave harvestman, *Texella cokendolpheri* (Opilionida: Phalangodidae), was collected in 1982 and described by Ubick and Briggs (1992). This species, along with the Robber Baron Cave meshweaver, is only known from Robber Baron Cave (Table 1).

Government Canyon Bat Cave Meshweaver

The Government Canyon Bat Cave meshweaver, *Cicurina vespera* (Araneae: Dictynidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993), and described by Gertsch (1992). The species is currently known from Government Canyon Bat Cave in Government Canyon State Natural Area and an unnamed cave referred to as ''5 miles northeast of Helotes.'' However, the specimen collected from the latter cave has been tentatively identified as a new species (Cokendolpher, in press).

Government Canyon Bat Cave Spider

The Government Canyon Bat Cave spider, *Neoleptoneta microps* (Araneae: Leptonetidae), was first collected on August 11, 1965, by J. Reddell and J. Fish (Reddell 1993). The species was originally described by Gertsch (1974)

as *Leptoneta microps* and later reassigned to *Neoleptoneta* following Brignoli (1977) and Platnick (1986). The species is known from 2 caves in Government Canyon State Natural Area (Table 1).

Madla Cave Meshweaver

The Madla Cave meshweaver, *Cicurina madla* (Araneae: Dictynidae), was first collected on October 4, 1963, by J. Reddell and D. McKenzie (Reddell 1993) and described by Gertsch (1992). The Madla Cave meshweaver has been found in eight caves (Table 1).

The Service is aware of 11 additional caves from which immature, eyeless troglobitic *Cicurina* spiders have been collected (SWCA 2000). Eight of these are in caves that have other listed species and are either included in critical habitat areas or areas that are not included in the designation due to the provision of adequate special management. The remaining three are in caves where authorization for take of *C. madla* was granted to La Cantera under a section 10(a)(1)(B) permit. These three caves have been, or will be, heavily impacted and are, therefore, not expected to contribute to the species recovery.

Robber Baron Cave Meshweaver

The Robber Baron Cave meshweaver, *Cicurina baronia* (Araneae: Dictynidae), was first collected in Robber Baron Cave February 28, 1969, by R. Bartholomew (Reddell 1993) and described by Gertsch (1992). The Robber Baron Cave meshweaver (a spider) is only known from Robber Baron Cave (Table 1).

Beetle (No Common Name) *Rhadine exilis*

The beetle *Rhadine exilis* (Coleoptera: Carabidae) was first collected in 1959. The species was described by Barr and Lawrence (1960) as *Agonum exile* and later assigned to the genus *Rhadine* (Barr 1974). The species is currently known to have been found in 47 caves (Table 1).

Beetle (No Common Name) *Rhadine infernalis*

Rhadine infernalis (Coleoptera: Carabidae) was first collected in 1959. The species was initially described by Barr and Lawrence (1960) as *Agonum infernale,* but later assigned to the genus *Rhadine* (Barr 1974). Scientists have recognized three subspecies (*Rhadine infernalis ewersi, Rhadine infernalis infernalis, Rhadine infernalis* new subspecies) (Barr 1974; Barr and Lawrence 1960; Reddell 1998), all of which are included as protected under the Federal listing of the full species as endangered. A total of 35 caves are known to contain *Rhadine infernalis* (Table 1).

Rhadine infernalis ewersi is known from 3 caves. *Rhadine infernalis infernalis* is known from 19 caves. The unnamed new subspecies (*Rhadine infernalis* new subspecies) was known from 6 caves at the time of the proposed rule designating critical habitat. During the public comment period, we received confirmation that *R. infernalis* collected from Obvious Little Cave has been identified as *R. infernalis* new subspecies. An additional 5 caves were identified in the proposed rule as containing *Rhadine infernalis* that have not yet been identified at the subspecies level. During the public comment period, we received survey information confirming the presence of *R. infernalis* in Continental Cave (Table 1). According to Veni (2002), specimens from these caves are probably *R. infernalis infernalis,* but have either not yet been fully identified or not reported.

Helotes Mold Beetle

The Helotes mold beetle, *Batrisodes venyivi* (Coleoptera: Pselaphidae), was first collected in 1984 and described by Chandler (1992). The species is currently known from six caves (Table 1). The location of one of the caves, referred to as ''unnamed cave ½ mile north of Helotes,'' is unknown. The original record for this cave is from Barr's (1974) description of *Rhadine exilis.* Because the number of caves in the general area is large, the location of this cave cannot be positively identified (George Veni, George Veni & Associates, pers. comm. 2002). However, this cave may not be a separate location after all, but may be an existing cave listed by the collector under the alternative name ''5 miles NE of Helotes.'' The cave referred to as ''5 miles NE of Helotes,'' also has an unknown location.

TABLE 1.—CAVES KNOWN AS OF DECEMBER 23, 2002, TO CONTAIN ONE OR MORE OF THE NINE BEXAR COUNTY, TEXAS, KARST INVERTEBRATES FEDERALLY LISTED AS ENDANGERED

Species (# of caves)	Cave name
Braken Bat Cave meshweaver (*C. venii*) (1)	Braken Bat Cave.
Cokendolpher cave harvestman (*Texella cokendolpheri*) (1)	Robber Baron Cave.
Government Canyon Bat Cave meshweaver (*C. vespera*) (1)	Government Canyon Bat Cave.
Government Canyon Bat Cave spider (*Neoleptoneta microps*) (2)	Government Canyon Bat Cave, Surprise Sink.
Madla Cave meshweaver (*Cicurina madla*) (8)	Christmas Cave, Madla's Cave, Madla's Drop Cave, Helotes Blowhole, Headquarters Cave, Hills and Dales Pit, Robber's Cave, Lost Pothole.
Robber Baron Cave meshweaver (*C. baronia*) (1)	Robber Baron Cave
Beetle (no common name) (*Rhadine exilis*) (47)	40 mm Cave, B–52 Cave, Backhole, Black Cat Cave, Boneyard Pit, Bunny Hole, Cross the Creek Cave, Dos Viboras Cave, Eagles Nest Cave, Hairy Tooth Cave, Headquarters Cave, Hilger Hole, Hold Me Back Cave, Hornet's Last Laugh Pit, Isocow Cave, Kick Start Cave, MARS Pit, MARS Shaft, Pain in the Glass Cave, Platypus Pit, Poor Boy Baculum Cave, Ragin' Cajun Cave, Root Canal Cave, Root Toupee Cave, Springtail Crevice, Strange Little Cave, Up the Creek Cave. Christmas Cave, Helotes Blowhole, Helotes Hilltop Cave, Logan's Cave, unnamed cave ½ mile N. of Helotes. Creek Bank Cave, Government Canyon Bat Cave, Lithic Ridge Cave, Pig Cave, San Antonio Ranch Pit, Tight Cave. Hills and Dales Pit, John Wagner Ranch Cave No. 3, Kamikazi Cricket Cave, La Cantera Cave No. 1, La Cantera Cave No. 2, Mastodon Pit, Robber's Cave, Three Fingers Cave, Young Cave No. 1.
Beetle (no common name) *R. infernalis* (6) (subspecies not indicated—probably *R. infernalis infernalis* but individual specimens are either not fully identified or reported (Veni 2002)).	Canyon Ranch Pit, Continental Cave, Fat Man's Nightmare Cave, Pig Cave, San Antonio Ranch Pit, Scenic Overlook Cave.

TABLE 1.—CAVES KNOWN AS OF DECEMBER 23, 2002, TO CONTAIN ONE OR MORE OF THE NINE BEXAR COUNTY, TEXAS, KARST INVERTEBRATES FEDERALLY LISTED AS ENDANGERED—Continued

Species (# of caves)	Cave name
R. infernalis ewersi (3)	Flying Buzzworm Cave, Headquarters Cave, Low Priority Cave.
R. infernalis new subspecies (7)	Caracol Creek Coon Cave, Game Pasture Cave No. 1, Isopit, King Toad Cave, Obvious Little Cave, Stevens Ranch Trash Hole Cave, Wurzbach Bat Cave.
R. infernalis infernalis (19)	Bone Pile Cave, Dancing Rattler Cave, Government Canyon Bat Cave, Hackberry Sink, Lithic Ridge Cave, Surprise Sink, Christmas Cave, Helotes Blowhole, Logan's Cave, Madla's Cave, Madla's Drop Cave, Crownridge Canyon Cave, Genesis Cave, John Wagner Ranch Cave No. 3, Kamikazi Cricket Cave, Mattke Cave, Robber's Cave, Scorpion Cave, Three Fingers Cave.
Helotes mold beetle (*Batrisodes venyivi*) (6)	San Antonio Ranch Pit, Scenic Overlook Cave, Christmas Cave, unnamed cave ½ mile N of Helotes, Helotes Hilltop Cave, unnamed cave 5 miles NE of Helotes.

Animal Community

Cave Crickets

Cave crickets are a critical source of nutrient input for karst ecosystems (Barr 1968; Reddell 1993). Cave crickets in the genus *Ceuthophilus* occur in most caves in Texas (Reddell 1966). Being sensitive to temperature extremes and drying, cave crickets forage on the surface at night and roost in the cave during the day. Cave crickets lay their eggs in the cave, providing food for a variety of karst species (Mitchell 1971b). Some karst species also feed on cave cricket feces (Barr 1968; Poulson *et al.* 1995) and on adults and nymphs directly (Cokendolpher, in press; Elliott 1994a). Cave crickets are scavengers or detritivores, feeding on dead insects, carrion, and some fruits, but not on foliage (Elliott 1994a).

Elliott (2000) studied the community ecology of three caves in protected areas of varying size in northwest Travis and Williamson Counties, Texas, from 1993 to 1999. The three caves are in areas protected as mitigation for two listed species found in Lakeline Cave during the development of Lakeline Mall. Lakeline Cave is located on a 0.9 hectares (ha) (2.3 acres (ac)) protected area and is surrounded by parking lots and a shopping center. Temples of Thor Cave and Testudo Tube are within much larger tracts of undeveloped land, being located on 42.5 ha (105 ac), and 10.5 ha (26 ac) of protected areas, respectively. During the monitoring study (1993–1999), the number of cave crickets drastically declined in Lakeline Cave, while they increased slightly or decreased moderately in the other two caves. Elliott (2000) concluded that drought, fire ants, and a decrease in racoon visitation caused the decline of the cave crickets. These results are consistent with reports of declines and extinctions of several invertebrates and small mammals (resulting from lower survivorship, higher emigration, and/or lower immigration) from habitat patches ranging in size from 2 to 7 ha (5 to 17 ac) (Mader 1984; Tscharntke 1992; Keith *et al.* 1993; Lindenmayer and Possingham 1995; Hill *et al.* 1996).

Elliott (1994a) evaluated cave cricket foraging within 50 m (164 ft) of cave entrances at his study sites and found crickets to the end of the 50 m sampling distance. On a few occasions he observed cave crickets beyond his sampling sites, and on one occasion he set a trap 60 m (197 ft) from the entrance and found one large adult. Elliott (1994a) concluded that the ''largest adults probably are capable of traveling far beyond 60 m from the entrance,'' but he did not have the data necessary to establish how far they go. During recent cave cricket surveys conducted for an ongoing project in central Texas, an adult cave cricket was found foraging 95 m (311 ft) from the study cave (Steve Taylor, Illinois Natural History Survey, pers. comm. 2002).

As trogloxenes, cave cricket populations are dependent on the patchy distribution of karst voids. Therefore, cave cricket populations may have a metapopulation (subpopulations that interact via the dispersal of individuals from one subpopulation to others) or a source-sink population structure, and it may be important to protect multiple karst features that support cave crickets in a karst ecosystem (Helf *et al.* 1995). Metapopulation dynamics require movement among patches, and persistence requires interacting patches that undergo local extinctions and establishment of new subpopulations in areas previously devoid of individuals (Hanski 1999). ''Source'' populations are those that occur ''in a high-quality habitat in which birth rate generally exceeds the death rate and the excess individuals leave as emigrants.'' ''Sink'' populations are those that occur ''in a low-quality habitat in which the birth rate is generally lower than the death rate and population density is maintained by immigrants from source populations (Meffe *et al.* 1997). Because cave crickets are a key source of nutrient input for karst ecosystems, conserving adequate areas between karst patches in a manner that allows for movement of individuals among cave cricket populations is likely an important factor in long-term maintenance for karst ecosystems.

Subsurface karst areas may also be important to allow movement among cave cricket populations through the subsurface environment associated with continuous limestone blocks. For example, Caccone and Sbordoni (1987) studied nine species of North American cave crickets (genera *Eukadenoecus* and *Hadenoecus*) from sites in North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Kentucky, and Alabama. Seven of the species were obligate cave-dwelling species that emerged at night to feed. Through genetic analyses of the cave-dwelling species, they found that species or groups of populations inhabiting areas where the limestone is continuous and highly fissured are genetically less differentiated than are populations occurring in regions where the limestone distribution is more fragmented, indicating more exchange of individuals in areas of continuous karst.

Helf *et al.* (1995) suggested that populations of an eastern species of cave cricket (*Hadenoecus subterraneus*) may be at risk because they do not recover quickly after events such as drought, floods, and temperature extremes that preclude or diminish foraging opportunities. These cave cricket populations may have source-sink population dynamics, with some

karst features acting as sources and the majority of karst features acting as sinks, but Helf *et al.* (1995) recommends that ''even sink populations should be protected because their emigrants can ''rescue'' source populations that experience local decimation.'' These studies suggest that it is important to protect the geological features that connect caves and maintain habitat corridors among caves.

Other Surface Animals

Many central Texas caves with endangered invertebrate species are frequented by mammals and several species of reptiles and amphibians (Reddell 1967). Although there are no studies establishing the role of mammals in central Texas cave ecology, the presence of a large amount of animal materials (such as scat, nesting materials, and dead bodies) indicates they are probably important. An important source of nutrients for the cave species may be the fungus, microbes, and/or other troglophiles and troglobites that grow or feed on feces (Elliott 1994b; Gounot 1994).

For predatory troglobites (such as the listed Bexar County invertebrates), invertebrates that accidently occur in the caves may also be an important nutrient source (Hopper 2000). Documented accidental species include snails, earthworms, terrestrial isopods (commonly known as pillbugs or potato bugs), scorpions, spiders, mites, collembola (primitive wingless insects that are commonly known as springtails), thysanura (commonly known as bristletails and silverfish), harvestmen (commonly known as daddy-long-legs), ants, leafhoppers, thrips, beetles, weevils, moths, and flies (Reddell 1965; 1966; 1999).

Vegetation Community

Surface vegetation is an important element of the karst habitat for several reasons, including its role in providing nutrients from: (1) Direct flow of plant material into the karst with water; (2) habitat and food sources provided for the animal communities that contribute nutrients to the karst ecosystem (such as cave crickets, small mammals, and other vertebrates); and possibly, (3) roots that extend into subsurface areas. Surface vegetation also acts as a buffer for the subsurface environment against drastic changes in the temperature and moisture regime and serves to filter pollutants before they enter the karst system (Biological Advisory Team 1990; Veni 1988). In some cases, healthy native plant communities also help control certain exotic species (such as fire ants) (Porter *et al.* 1988) that may compete with or prey upon the listed species and other species (such as cave crickets) that are important nutrient contributors (Elliott 1994a; Helf, *in litt.* 2002).

Tree roots have been found to provide a major energy source in shallow lava tubes and limestone caves in Hawaii (Howarth 1981). Jackson *et al.* (1999) investigated rooting depth in 21 caves on the Edwards Plateau to assess the belowground vegetational community structure and the functional importance of roots. They observed roots penetrating up to 25 m (82 ft) into the interior of 20 of the caves, with roots of 6 tree species common to the plateau penetrating to below 5 m (16.4 ft).

Along with providing directly and indirectly nutrients to the karst ecosystem, a healthy vegetative community may also help control the spread of exotic species. The red imported fire ant (*Solenopsis invicta*) is an aggressive predator, which has had a devastating and long-lasting impact on native ant populations and other arthropod communities (Vinson and Sorenson 1986; Porter and Savignano 1990) and is a threat to the karst invertebrates (Elliott 1994b; USFWS 1994). Fire ants have been observed building nests both within and near cave entrances, as well as foraging in caves, especially during the summer. Shallow caves inhabited by listed karst invertebrates are especially vulnerable to invasion by fire ants and other exotic species. In addition to preying on cave invertebrate species, including cave crickets, fire ants may compete with cave crickets for food (Elliott 1994a; Helf *in litt.* 2002). Helf (*in litt.* 2002) states that competition for food between fire ants and cave crickets (*Ceuthophilus secretus*) may be a more important interaction than predation. The presence of fire ants in and around karst areas could have a drastic detrimental effect on the karst ecosystem through loss of both surface and subsurface species that are critical links in the food chain.

The invasion of fire ants is known to be aided by ''any disturbance that clears a site of heavy vegetation and disrupts the native ant community'' (Porter *et al.* 1988). Porter *et al.* (1991) state that control of fire ants in areas greater than 5 ha (12 ac) may be more effective than in smaller areas since multiple queen fire ant colonies reproduce primarily by ''budding,'' where queens and workers branch off from the main colony and form new sister colonies. Maintaining large, undisturbed areas of native vegetation may also help sustain the native ant communities (Porter *et al.* 1988; 1991).

Listed species, and their associated prey items, have adapted to native vegetation, with its associated nutrients, surface foliage, and subsurface roots. Before 1860, Bexar County native vegetation consisted of an approximate equal mix of areas with woody and grassland plants (Del Weniger 1988). In more recent times, exotic species have often replaced native plants. The effects on listed invertebrates of replacement of native with exotic vegetation have not been reported.

Woodland-Grassland Community

Because of the various roles played by surface vegetation in maintaining the cave and karst ecosystem, including the listed karst invertebrate species that are part of the ecosystem, we examined the best available scientific information to estimate the surface vegetation needed to support ecosystem processes. The woodland-grassland mosaic community typical of the Edwards Plateau is a patchy environment composed of many different plant species. Van Auken *et al.* (1980) studied the woody vegetation of the Edwards and Glen Rose formations in the southern Edwards Plateau in Bexar, Bandera, and Medina counties. They encountered a total of 24 species of plants on the Edwards or Glen Rose geologic formations, two of the principal, cave-containing rock units of the Edwards Plateau.

To maintain natural vegetation communities over the long term, enough individuals of each plant species must be present for successful reproduction. The number of reproductive individuals necessary to maintain a viable or self-reproducing plant population is influenced by needs for satisfactory germination (Menges 1995), genetic variation (Bazzaz 1983; Menges 1995; Young 1995), and pollination (Groom 1998; Jennersten 1995; Bigger 1999). Pavlik (1996) stated that long-lived, self-fertilizing, woody plants with high fecundity would be expected to have minimum viable population sizes in the range of 50–250 reproductive individuals. Fifty reproductive individuals is a reasonable minimum figure for one of the dominant species of the community (*Juniperous ashei*) based on reproductive profiles (Van Auken *et al.* 1979; Van Auken *et al.* 1980; Van Auken *et al.* 1981). This figure would likely be an underestimate for other woody species present in central Texas woodlands, however, because these other species are more sensitive to environmental changes and do not meet several of the life-history criteria needed for the lowest minimal viable population size. Although these species may require population sizes at

the higher end of range (that is, nearer 250 individuals) suggested by Pavlik (1996) to be viable, we do not have the data to support that contention. Therefore, on the basis of our review of information available to us, and after soliciting input from a botanist with expertise in the Edwards Plateau (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm. 2002), we consider a minimum viable population size for individual plant species composing a typical oak/juniper woodland found in central Texas to be 80 individuals per species. This estimate is based on a habitat type that, as a whole, is fairly mature, and on knowledge that the species are relatively long-lived and reproductively successful.

On the basis of an analysis of recorded densities, corrected for nonreproductive individuals, we then calculated the area needed to support 80 mature reproductive individuals per species for the 24 species reported by Van Auken *et al.* (1980). Based on our calculations, the four highest area requirements to maintain at least 80 mature individuals were for species that occur at lower densities. These included 80 ha (198 ac) for *Condalia hookeri,* and approximately 32 ha (79 ac) for each of *Ptelea trifoliata, Ungnadia speciosa,* and *Bumelia lanuginosa.* Our calculations indicate that the area needed to maintain the 7 species with the highest average dominance values (*Juniperus ashei, Quercus fusiformis, Quercus texana, Acacia greggii, Rhus virens, Berberis trifoliata,* and *Ulmus crassifolia*) is approximately 13 ha (33 ac). This number would maintain 80 reproductive individuals for 15 of the 24 species. Nine of the species are rarer in the community and all have importance values of less than 1.0. The area needed to maintain these nine species ranges from approximately 20 to 80 ha (49 to 198 ac), with 7 of them in the 26 ha to 32 ha (65 to 79 ac) range.

Most literature found for Central Texas native grasslands was descriptive and not quantitative in its treatment of species composition and dispersion. No literature was located that provided grassland species area curves or quantitative species density tables for the Central Texas area. Two papers by Lynch (1962, 1971) examined species on an 8-acre tract over time, with 123 species, but a high species turnover. High species turnover can be indicative of a habitat area which is too small; however, pre- and post-drought conditions may also have affected this situation. Robertson *et al.* (1997), in a slightly more mesic grassland habitat, found that a 4 ha (10 ac) site captured most of the species diversity (100 species) present even in much larger patches, although it does not address population sizes and persistence in isolation, and an increase to a 6 ha (14 ac) tract increased species representation to 140. One paper on a grassland in a more westerly and drier location in Central Texas recorded 157 taxa in a 16 ha (40 ac) exclosure studied between 1948 and the mid-1970's (Smeins and Merrill 1976).

Primary recruitment of new individuals of grass species in grasslands is from seedling establishment. Many grass species use wind to disperse their seeds and dispersal distances may be small. The process of expansion through rhizomes (underground stems) is slow and clonal, which reduces genetic variability. Seed dispersal, soil texture, and suitable soil moisture profiles at critical times are important factors for maintaining viability (Coffin *et al.* 1993).

As described above, we have reviewed the available information concerning grasslands and grassland species in Central Texas. The information is of a relatively general nature, and we did not find specific information addressing the role that grasslands or grass species might play in contributing, directly or indirectly, to karst ecosystems. While grassland communities and species may be important to maintaining the karst community, we lack adequate information to credibly estimate surface habitat patch size requirements for grass species in relation to karst ecosystems.

The presence of surface vegetation communities is important for maintaining the humid conditions, stable temperatures, and natural airflow in cave and karst environments. Vegetation also plays an important role in water quality. Since soil depth is shallow over the limestone plateau, water collects as sheet flow on the surface following rain and enters the subsurface environment through cave openings, fractures, and solutionally-enlarged bedding planes. This direct, rapid transport of water through the karst allows for little or no purification (Veni 1988), allowing contaminants and sediments to enter directly into the subsurface environment. As a result, karst features and karst dependent invertebrates are vulnerable to the adverse effects of pollution from contaminated ground and surface water. Maintaining stable environmental conditions and protecting groundwater quality and quantity requires managing a healthy vegetation community to avoid threats from surface and subsurface drainage to the karst environment needed by the karst dependent species. This includes not only the cave entrances accessible to humans, but also sinks, depressions, fractures, and fissures, which may serve as subsurface conduits into caves and other subsurface spaces used by the invertebrates.

Buffer Areas

To maintain a viable vegetative community, including woodland and grassland species, a buffer area is needed to shield the core habitat from impacts associated with edge effects or disturbance from adjacent urban development (Lovejoy *et al.* 1986; Yahner 1988). In this context, edge effects refer to the adverse changes to natural communities (primarily from increases in invasive species and pollutants, and changes in microclimates) from nearby areas that have been modified for human development.

The changes caused by edge effects can occur rapidly. For example, vegetation 2 m (6.6 ft) from a newly created edge can be altered within days (Lovejoy *et al.* 1986). Edges may allow invasive plant species to gain a foothold where the native vegetation had previously prevented their spread (Saunders *et al.* 1990; Kotanen *et al.* 1998; Suarez *et al.* 1998; Meiners and Steward 1999). When plant species composition is altered as a result of an edge effect, changes also occur in the surface animal communities (Lovejoy and Oren 1981; Harris 1984; Mader 1984; Thompson 1985; Lovejoy *et al.* 1986; Yahner 1988; Fajer *et al.* 1989; Kindvall 1992; Tscharntke 1992; Keith *et al.* 1993; Hanski 1995; Lindenmayer and Possingham 1995; Bowers *et al.* 1996; Hill *et al.* 1996; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996; Mankin and Warner 1997; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998; Crist and Ahern 1999; Kindvall 1999). Changes in plant and animal species composition as a result of edge effects may unnaturally change the nutrient cycling processes required to support cave and karst ecosystem dynamics. To minimize edge effects, the core area must have a sufficient buffer area.

One recommendation for protecting forested areas from edge effects that are in proximity to clear-cut areas is use of the ''three tree height'' approach (Harris 1984) for estimating the width of the buffer area needed. We used this general rule to estimate the width of buffer areas needed to protect the habitat core areas. The average height of native mature trees in the Edwards woodland association in Texas ranges from 3 to 9

m (10 to 30 ft) (Van Auken *et al.* 1979). Applying the ''three tree height'' general rule, and using the average value of 6.6 m for tree height, we estimated that a buffer width of at least 20 m (66 ft) is needed around a core habitat area to protect the vegetative community from edge effects. Based on this rule, 7 acres is necessary to protect a 33-acre core area. We recognize that the ''three tree height'' approach described by Harris (1984) was based on the distance that effects of storm events (''wind-throw'') from a surrounding clear-cut ''edge'' will penetrate into an old-growth forest stand. Since the effects of edge on woodland/grass land mosaic communities have not been well studied, the ''three tree height'' recommendation is considered to be the best available peer-reviewed science to protect woodland areas from edge effects (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm. 2003). The Texas Parks and Wildlife Department is also in general agreement about the need for some type of buffer as a means of addressing edge effects, but currently has not specific recommendations on appropriate size for such a buffer (John Herron, Texas Parks and Wildlife Department, pers. comm. 2003).

Animal communities also should be buffered from impacts associated with edge effects or disturbance from adjacent urban development. Edges can act as a barrier to dispersal of birds and mammals (Yahner 1988; Hansson 1998). Invertebrate species are affected by edges. Mader *et al.* (1990) found that carabid beetles and lycosid spiders avoided crossing unpaved roads that were even smaller than 3 m (9 ft) wide. Saunders *et al.* (1990) suggested that as little as 100 m (328 ft) of agricultural fields may be a complete barrier to dispersal for invertebrates and some species of birds. In general, for animal communities, species need buffers of 50 to 100 m (164 to 328 ft) or greater to ameliorate edge effects (Lovejoy *et al.* 1986; Wilcove *et al.* 1986; Laurance 1991; Laurance and Yensen 1991; Kapos *et al.* 1993; Andren 1995; Reed *et al.* 1996; Burke and Nol 1998; Didham 1998; Suarez *et al.* 1998).

Nonnative fire ants are known to be harmful to many species of invertebrates and vertebrates. In coastal southern California, Suarez *et al.* (1998) found that densities of the exotic Argentine ant (*Linepithema humile*), which has similar life history and ecological requirements to the red imported fire ant (Dr. Richard Patrock, University of Texas at Austin, pers. comm. 2003), are greatest near disturbed areas. Native ant communities tended to be more abundant in native vegetation and less abundant in disturbed areas. Based on the association of the Argentine ant and distance to the nearest edge in urban areas, core areas may only be effective at maintaining natural populations of native ants when there is a buffer area of at least 200 m (656 ft) (Suarez *et al.* 1998).

Information on the area needed to maintain populations of animal species, including cave crickets, found in Central Texas is lacking. As discussed above, animal communities should be buffered by areas of 50 to 100 m (164 to 328 ft) or greater to ameliorate edge effects, and by areas of 200 m (656 ft) to buffer against the effects of fire ants. From this data, we determined that a buffer of 100 m (328 ft), in addition to the 50 m (164 ft) cave cricket foraging area, would, at a minimum, protect the cave cricket foraging area from the effects of edge and nonnative species invasions.

Fragmentation

Haskell (2000) examined the effect of habitat fragmentation by unpaved roads through otherwise contiguous forest in the southern Appalachian Mountains and found reduced soil macroinvertebrate species abundance up to 100 m (328 ft) from the road and declines in faunal richness up to 15 m (50 ft) from the road. Haskell (2000) pointed out that ''these changes may have additional consequences for the functioning of the forest ecosystem and the biological diversity found within this system. The macroinvertebrate fauna of the leaf litter plays a pivotal role in the ability of the soil to process energy and nutrients.'' Haskell further points out that these changes may in turn affect the distribution and abundance of other organisms, particularly plants. Changes in abundance in litter dwelling macroinvertebrates may also affect ground-foraging vertebrate fauna (Haskell 2000).

Invertebrate biomass per unit area has been found to be less in small fragmented habitats, which may result in reduced food available for cave crickets. Burke and Nol (1998), working in southern Ontario, Canada, found a greater biomass of leaf litter invertebrates in large (≥20 ha (49 ac)) than in smaller forested areas. Zanette *et al.* (2000) in New South Wales, Australia, reported that the biomass of ground dwelling invertebrates was 1.6 times greater in large (> 400 ha (988 ac)) than in smaller (~55 ha (136 ac)) forested areas.

Dispersal

The ability of individuals to move between preferred habitat patches is essential for colonization and population viability (Eber and Brandl 1996; Fahrig and Merriam 1994; Hill *et al.* 1996; Kattan *et al.* 1994; Kindvall 1999; Kozlov 1996; Kuussaari *et al.* 1996; Turner 1996). Patch shapes allowing connection with the highest number of neighboring patches increase the likelihood that a neighboring patch will be occupied (Fahrig and Merriam 1994; Kindvall 1999; Kuussaari *et al.* 1996; Tiebout and Anderson 1997). If movement among populations is restricted and a population is isolated, the habitat patch size must be large enough to ensure that the population can survive (Fahrig and Merriam 1994).

It is likely that many cave systems are connected throughout the subsurface geologic formation even though this may not be readily apparent from surface observations. The extent to which listed species use interstitial spaces and passages is not known. Troglobitic species may retreat into these small interstitial spaces where the physical environment is more stable (Howarth 1983) and may spend the majority of their time in such retreats, only leaving them during temporary forays into the larger cave passages to forage (Howarth 1987). During several karst invertebrate surveys conducted in Bexar County caves, Service biologists have observed that troglobites, including listed species, were not found when temperature and humidity in the cave was low. Upon returning to the same cave once environmental conditions returned to optimal, the listed species and other troglobites were observed.

Small voids (inaccessible to humans) and interstitial spaces can also provide subsurface corridors for movement of listed species and cave crickets between and among caves and karst features. Cores drilled around and between occupied caves have led to discovery of additional void space that was hydrologically, but not physically connected to the humanly-accessible portion of an occupied cave. Listed species were found in this void space.

Summary

The conservation of the endangered karst invertebrates depends on a self-sustaining karst ecosystem; surface and subsurface drainage basins to maintain adequate levels of moisture; and a viable surface animal and plant community for nutrient input and protection of the subsurface from adverse impacts. The area needed to conserve such an

ecosystem includes a core area buffered from the impacts associated with fragmentation, isolation, edge effects, and other factors that may threaten ecosystem stability. Depending on the size and shape of these core habitat areas or patches, in order to remain viable, they may also require connections to other habitat patches.

Previous Federal Action

On January 16, 1992, we received a petition submitted by representatives of the Helotes Creek Association, the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association to add the nine invertebrates to the List of Threatened and Endangered Wildlife. On December 1, 1993, we announced in the **Federal Register** (58 FR 63328) a 90-day finding that the petition presented substantial information that listing may be warranted.

On November 15, 1994, we added eight of the nine invertebrates to the Animal Notice of Review as category 2 candidate species in the **Federal Register** (59 FR 58982). We intended to include *Rhadine exilis* in the notice of review, but an oversight occurred and it did not appear in the published notice. Category 2 candidates, a classification since discontinued, were those taxa for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support proposed listing rules.

On December 30, 1998, we published a proposed rule to list the nine Bexar County karst invertebrates as endangered (63 FR 71855). Incorporating comments and new information received during the public comment period on the proposed rule, we published a final rule to list the nine Bexar County karst invertebrate species as endangered in the **Federal Register** on December 26, 2000 (65 FR 81419).

In the proposed rule for listing these species, we indicated that designation of critical habitat was not prudent for the nine invertebrates because the publication of precise species locations and maps and descriptions of critical habitat in the **Federal Register** would make the nine species more vulnerable to incidents of vandalism through increased recreational visits to their cave habitat and through purposeful destruction of the caves. We also indicated that designation of critical habitat was not prudent because it would not provide any additional benefits beyond those provided through listing the species as endangered.

Based on recent court decisions (for example, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)) and the standards applied in those judicial opinions, we reexamined the question of whether critical habitat for the nine invertebrates would be prudent. After reexamining the available evidence for the nine invertebrates, we did not find specific evidence of collection or trade of these or any similarly situated species. Consequently, in our final rule listing the species, we found that ''by designating critical habitat in a manner that does not identify specific cave locations, the threat of vandalism by recreational visits to the cave or purposeful destruction by unknown parties should not be increased'' (65 FR 81419). Therefore, our final rule to list the species as endangered also included our determination that critical habitat designation was prudent as we did not find specific evidence of increased vandalism, and we found there may be some educational or informational benefit to designating critical habitat. Thus, we found that the benefits of designating critical habitat for the nine karst invertebrate species outweighed the benefits of not designating critical habitat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) stated that we would undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget was insufficient to allow us to immediately complete all of the listing actions required by the Act during FY 2000. We stated that we would propose designation of critical habitat in the future at such time when our available resources and priorities allowed.

On November 1, 2000, the Center for Biological Diversity (Center) filed a complaint against the Service alleging that the Service exceeded its 1-year deadline to publish a final rule to list and to designate critical habitat for the nine Bexar County cave invertebrates. Subsequent to the Service publishing the final rule to list these nine species as endangered on December 26, 2000, the Center agreed to dismiss its claim regarding the listing of the species. Under the terms of a settlement reached between the Center and the Service, the Service agreed to submit to the **Federal Register** for publication a proposed critical habitat determination on or by June 30, 2002, and a final determination on or by January 25, 2003. Sixty-day extensions on the deadlines to submit both the proposed and final critical habitat determinations to the **Federal Register** for publication were approved by the court, and the new deadlines became August 31, 2002, and March 26, 2003, for the proposed and final rules, respectively.

On February 28, 2002, we mailed letters to the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission informing them that we were in the process of designating critical habitat for the nine Bexar County karst invertebrates. We requested any additional available information on the listed species, including biology; life history; habitat requirements; distribution, including geologic controls to species distribution; current threats; and management activities, current or in the foreseeable future. The letters contained a current list of Bexar County caves known to contain listed species, a map showing the general distribution of these species within each Karst Fauna Region, and a list of the references pertaining to these species and their distribution as we know it. We requested their review and comments on our current information and asked their assistance in providing any additional available information.

We also mailed approximately 300 pre-proposal letters to interested parties and cave biologists on March 20, 2002, informing them that we were in the process of designating critical habitat for the 9 listed karst invertebrates. The letters contained a copy of the final rule to list these Bexar County invertebrate species as endangered, a map showing the general distribution of these species, a list of literature about these species and their habitats, and a brief summary with questions and answers on critical habitat. We requested comments on: (1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas; (2) land use practices and current or planned activities in the subject areas and their possible impacts on possible critical habitat; (3) any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and particularly any impacts on small entities or families; and (4) economic and other benefits associated with designating critical habitat for the Bexar County karst invertebrates.

On August 27, 2002, we proposed that 25 units encompassing a total of approximately 3,857 ha (9,516 ac) in

Bexar County, Texas, be designated as critical habitat for the nine karst invertebrates (67 FR 55064). The comment period for the proposed rule was originally scheduled to close on November 25, 2002, but was extended until December 23, 2002 (67 FR 70203), to allow for a 30-day comment period on the draft economic analysis. Thus, we accepted comments on the proposed rule and the economic analysis until December 23, 2002.

Summary of Comments and Recommendations

In the August 27, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the nine endangered Bexar County invertebrates (67 FR 55064). During the comment period, we held a public hearing in San Antonio on October 30, 2002. We published a newspaper notice inviting public comment and announcing the public hearing in the San Antonio Express-News. A transcript of the hearing is available for inspection (*see* **ADDRESSES** section). The comment period was originally scheduled to close on November 25, 2002.

On November 21, 2002, we announced the availability of the draft economic analysis and requested comments on it and the proposal during an extension of the comment period until December 23, 2002 (67 FR 70203). We contacted all appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties and invited them to comment. We also provided notification of these documents through email, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. For the notice of the proposed rule, we mailed over 1,500 letters to interested parties. Later we sent over 1,200 post cards notifying interested parties of the availability of the draft economic analysis and the extension of the comment period. The number of parties on the mailing list fell as we deleted out-of-date and duplicate addresses. We also published all of the associated documents on the Service's regional Internet site following their release.

We solicited 11 independent experts who are familiar with these species and the karst ecosystem to peer-review the proposed critical habitat designation. Only one of the peer reviewers submitted comments, generally in support of the proposed designation (see ''Peer Review'' section below). We also received a total of 42 written comments, and 3 oral comments at the public hearing. Of those comments indicating a preference, 10 supported the critical habitat designation and 13 indicated opposition to designation. Many commenters did not express opposition to the designation, but did express opposition to specific areas being included. We reviewed all comments received for substantive issues and new data regarding critical habitat and the draft economic analysis. Here, we address all comments on both documents received during the comment periods, as well as public hearing testimony. We have grouped similar comments and addressed them in the following summary.

Issue 1: Biological Justification and Methodology for Size of Critical Habitat Units

(1) *Comment:* The Service should designate smaller areas for critical habitat units, including: (1) Surface and subsurface drainage areas; (2) cave cricket foraging areas; and (3) dominant and subdominant woody species, rather than uncommon plant species. The Service focused its methodology on surface plant communities, but little information exists relating particular vegetation communities to the subsurface habitat of the listed species.

Our Response: We believe it is well documented that surface flora and fauna communities are an essential energy source for fauna, including the nine endangered invertebrates, in the karst environment. The areas needed to support dominant, subdominant, and ''other woody species'' common to the Edwards Plateau were included in our proposal to incorporate key components of the native vegetative community that contribute directly to nutrient input, and which also support the animal community that is another source of nutrient input to karst areas. We do not have data from vegetation surveys conducted around occupied caves to determine the importance of rarer plant species. Therefore, in this final designation we have reduced the size of all of the critical habitat units based on the amount of area that we believe, based on the best available information, is needed to support at least 15 of 24 species of vegetation on the Edwards Plateau, including the seven species with the highest dominance values, but not the rarer plant species (see ''Criteria Used to Delineate Critical Habitat'' section below for further explanation).

(2) *Comment:* The Service should designate larger areas for the critical habitat units to: (1) Include all or most of Karst Zone 1; (2) all or portions of Karst Zone 2; (3) reduce fragmentation of habitat; (4) consider subsurface karst voids between known caves that may provide habitat for the species; (5) provide better protection against pollution; and (6) provide dispersal corridors for cave crickets.

Our Response: We agree that it is likely that all of these concerns have the potential to affect the conservation of the endangered karst invertebrates. Much of the biology and ecology of these karst-adapted listed species is not well understood. Critical habitat was delineated to encompass areas on which are found those components of the karst ecosystem for which sufficient information exists to determine that they are essential to the conservation of the listed species.

We recognize that areas outside of the boundaries of critical habitat may be important for the karst invertebrates for purposes such as providing habitat in interstitial karst voids (beyond the known caves), additional sources of nutrients, or dispersal corridors. However, we did not have sufficient data when we proposed critical habitat, nor were any data provided during the comment period, that would allow us to adequately assess the importance to occupied caves of other areas of Karst Zones 1 or 2, karst voids between known caves, larger buffers, or areas that are needed for dispersal corridors for cave crickets. For instance, members of the Technical Subcommittee of the Karst Invertebrate Recovery Team, who are experts on the species and the karst ecosystems, agree that it is likely the invertebrates spend considerable time, perhaps the majority of time, in the human-inaccessible karst voids (interstitial spaces) associated with the cave (Steve Taylor, Technical Subcommittee chair, pers. comm. 2002). However, the distance that these invertebrates go from the cave into the surrounding karst is unknown. Since protection of the surface and subsurface drainage areas associated with each occupied cave is important to buffer the cave from pollutants, these drainage areas were included, where possible, in the critical habitat designation. Additional scientific discovery may show that larger areas are needed for long-term conservation, and we will continue to incorporate such information into planning and implementing various conservation activities for these species. Given the best available information, we believe the specific areas designated in this rule contain one or more of the physical or biological features that are essential to the conservation of the species and meet the definition of critical habitat as provided in section 3 of the Act.

(3) *Comment:* The proposed rule did not show that designating critical habitat was essential to conservation of the species or requires special management.

Our Response: Section 3 of the Act defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination * * * that such areas are essential for the conservation of the species.'' Regulations (50 CFR 424.12) direct us to ''focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species.'' Conservation is defined in the Act, section 3, as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' We believe the proposed rule demonstrated that the primary constituent elements we recognized are essential to the conservation of the species. The areas we are designating all contain one or more of such features.

The caves and the associated karst are essential to the conservation of the species because the invertebrates live, feed, and reproduce in the caves and the associated karst structures. The subsurface drainage area is essential to provide the environmental conditions in the cave that are requirements for the species. The surface drainage area helps maintain the environmental conditions and helps maintain an energy flow into the underground karst system. The surface vegetation is a direct source of energy through plant materials entering the karst system, and the surface vegetation also supports animals (such as cave crickets) that process the plant materials and then leave the resulting nutrients in the cave. Cave crickets are likely one of the most important sources of nutrients that support the endangered karst invertebrates. We believe this final rule documents that the areas designated meet the definition of critical habitat in that they contain one or more of the physical and biological features that are essential to the conservation of the endangered karst invertebrates. We also have carefully reviewed whether such areas may require special management considerations or protection, as called for under the definition of critical habitat in section 3(5)A)(i) of the Act. On the basis of our evaluation of certain areas already covered by conservation plans and thus already have special management considerations or protection, we did not include some areas in this final designation. (*See* ''Lands Covered Under Existing Conservation Plans'' section, below.)

(4) *Comment:* Because critical habitat must contain those physical or biological features essential to the conservation of the species, with the term ''conservation'' being considered synonymous with recovery, it appears that the same criteria used by the Service to delineate critical habitat must be incorporated into recovery plans for the Bexar County karst invertebrates. The commenter also hypothesized that the recovery of the Bexar County invertebrates will require establishment of a certain number of caves within adequate preserves that meet the parameters described in the proposed rule for critical habitat designation. Although a recovery plan has not yet been developed for these species, some of the areas proposed as critical habitat do not appear as if they will meet likely future recovery criteria for these species.

Our Response: We recognize that our designation of critical habitat may not include all the habitat areas that might eventually be determined to be necessary for the conservation of the listed karst invertebrates. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be recommended for attention as part of a recovery plan. Similarly, critical habitat designations made on the basis of the best information available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, particularly if new information available to these planning efforts calls for a different outcome. We also note that as provided for under section 4(a)(3) of the Act, we can revise our designation of critical habitat in the future if it is appropriate to do so.

Designation of critical habitat does not establish recovery criteria; that is one of the purposes of a recovery plan. Pursuant to section 4(f)(1) of the Act, the Service develops and implements plans, referred to as recovery plans, for the conservation and survival of listed species. As defined in section 3 of the Act, ''conservation'' means ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' A key purpose of a recovery plan is to recognize the threats to the listed species and propose methods for removing or minimizing the threats.

A Recovery Team, including stakeholders, currently is working with the Service to prepare a draft recovery plan for these species. While the Team has discussed recovery criteria, no draft plan has been developed. When a plan is developed, the public's review and comments will be solicited before a final plan is adopted by the Service. We cannot currently say how many or which areas will be identified in the recovery plan as being important for the conservation the species.

(5) *Comment:* The Service's recommendation for the size of the critical habitat units appears to be based on the study of a single cave (Lakeline Cave in Williamson County, Texas) that may not be representative of the other karst features.

Our Response: The recommended size for critical habitat units is not based on the results of the Lakeline Cave cricket study. The Service used the Lakeline study as one source of information that suggests small areas of native vegetation, surrounded by urban development, are not adequate to sustain the cave cricket population, which is believed to be a key to the ecology of karst invertebrates and a primary source of cave nutrients. Our designation is based on the use of the best scientific data available regarding the physical and biological features that are essential to the conservation of the species and the identification of specific areas where such features are found.

(6) *Comment:* The size of the area needed to support native plant communities is based on the need for the plants to support each other, not one karst ecosystem. Therefore, no reason exists that multiple cave/karst ecosystems cannot occur within the boundaries of one critical habitat unit, as long as the actual areas providing nutrients to each cave are encompassed.

Our Response: We agree that the approach taken in the proposed rule of providing adequate surface plant communities for the karst ecosystem does not necessarily require more surface area to support multiple caves in close proximity. In the final rule, we revised our methods for delineating critical habitat to include multiple caves within the same smaller surface area, where appropriate. For each cave, we overlaid the areas needed to include the surface and subsurface drainages, cave cricket foraging area, and the vegetative surface community (see ''Critical Habitat'' section).

(7) *Comment:* The Service should consider only designating the cave cricket foraging area plus a buffer area, or about 5.34 ac, as critical habitat around each cave.

Our Response: We agree that the immediate area around an occupied cave is very important for cave cricket foraging and other reasons, and that this area should be included in the critical habitat designation. However, there are additional physical and biological features that we have identified as essential to the conservation of the species, consistent with the definition of critical habitat in section 3 of the Act. The area recommended by the commenter would not adequately provide for the features and related primary constituent elements that we have identified as being essential to the conservation of these species (*see* ''Critical Habitat'' and ''Primary Constituent Elements'' sections, below).

(8) *Comment:* Based on the Testudo Tube Cave example in Williamson County, 31 acres (26-acre preserve plus a buffer area) may be an adequate area for critical habitat units.

Our Response: Testudo Tube Cave Preserve in Williamson County, Texas, is surrounded by several hundred acres of undeveloped land and is adjacent to an even larger preserved area of several thousand acres, resulting in an effective ''preserve'' size of much larger than 31 acres. We will be interested in long-term studies of the Testudo Tube Cave Preserve that may provide additional information about the adequacy of the size of the preserve. We note also that designating critical habitat does not establish a preserve (see ''Critical Habitat'' section).

(9) *Comment:* Boundaries of the critical habitat units are arbitrary and not properly defined. The boundaries should be based on biology and not roads and surface features.

Our Response: While the general size of the critical habitat unit boundaries are based on primary constituent elements needed by the species, in the proposed rule we did use roads and other surface features to make it easy for the public to identify the boundaries. In the changes to the boundaries in this final rule, we did not use surface features, but instead used specific coordinates to describe the boundaries. This allowed us to base boundaries mainly on biological, hydrological, and geological considerations, thereby delineating critical habitat areas more precisely.

(10) *Comment:* Critical habitat needs to be defined to include three new caves that have been discovered to contain listed species since the proposed rule was published.

Our Response: Of the three caves that were discovered to contain listed species since the proposed rule was published, two (Hackberry Sink and Dancing Rattler Cave) are located in Government Canyon State Natural Area. We have determined that the management for the caves and the species in the Natural Area provides adequate special management considerations for the primary constituent elements, and consequently units within the Natural Area that we proposed for designation are not included in this final rule. (See the ''Lands Covered Under Existing Conservation Plans'' section for further details.) One cave (Crownridge Canyon Cave) is in a new location, but was not included in this final determination because there would have been no opportunity for public comment had we included the area in critical habitat. Under our rulemaking procedures and the Administrative Procedure Act, we would first need to propose the area for designation and seek public review and comment on such a proposal before a designation would be possible. Because of the court-approved settlement agreement that set a deadline for finalizing this rule, we did not have enough time to republish a proposed rule that might have included the Crownridge Canyon Cave in the critical habitat designation. We note that the listed species in Crownridge Canyon Cave do occur in other caves within the critical habitat designation. Although we are not able to consider including Crownridge Canyon Cave in this designation of critical habitat, we believe the cave and the associated karst ecosystem to be important to the conservation of the species. Because the cave is known to be occupied, it will be covered by applicable provisions under sections 7 (requiring Federal agencies to consult under the ''jeopardy standard''), 9, and 10 of the Act.

(11) *Comment:* The Service ignored the potential for the species to occur in void spaces within the bedrock lying between caves.

Our Response: We agree that the species occur within, and use, subsurface voids in karst rock and areas between occupied caves, and we indicated this in the proposed rule for critical habitat. However, we do not have data to quantify such areas. Using the best available data, we designated critical habitat to incorporate the specific areas on which are found the primary constituent elements of a karst ecosystem in the vicinity of caves known to be occupied by the endangered species.

(12) *Comment:* How can a cave located within an area lacking a healthy surface plant community contain an intact subsurface environment?

Our Response: The surface vegetative community has been significantly altered by urbanization in some of the designated critical habitat units. Since the caves still contain the endangered species, we believe that the areas have maintained the primary constituent elements related to the karst subsurface environment and surface and subsurface drainages. We recognize that intensive management of the remaining surface habitat may be needed to compensate for lack of natural plant and animal communities on the surface.

Issue 2: Data Quality

(13) *Comment:* The available data used in the proposed rule is not adequate to support this critical habitat designation. There seems to be a particular lack of data on species biology, ecology, and distribution of the species and information on which to base the unit boundaries and areas.

Our Response: As per section 4(b)(2) of the Act, we are required to designate critical habitat ''on the basis of the best scientific data available,'' and we believe our designation meets that requirement. In general, the biology and ecology of the karst-adapted species are not well understood. Consequently, the criteria we used to delineate critical habitat, and the areas we delineated, were based on components of the karst ecosystem for which sufficient information exists to determine their importance to the listed species, and for which specific areas can be identified and mapped. The ''Information Sources'' and ''Criteria Used to Designate Critical Habitat'' sections below provide additional information regarding the basis for our designation.

(14) *Comment:* The number of Bexar County caves and those containing listed species should be updated to the latest available information. Will the Service designate critical habitat for new locations of the listed species that will be discovered subsequent to publication of the final rule for critical habitat designation?

Our Response: We fully agree that our knowledge of the caves in Bexar County that are known to provide habitat for endangered karst invertebrates should be as current as possible. This knowledge will help the Service evaluate the threats to the species, the status of the species, and plan for their conservation. We recognize that additional caves are likely to be found

in the future that have endangered karst invertebrates and may not be within the areas currently designated as critical habitat.

Section 4(a)(3) of the Act provides that subsequent to the designation of critical habitat, we ''may, from time-to-time thereafter as appropriate, revise such designation.'' Any new caves discovered to contain the listed species may be important to the conservation of the species, and we will consider them for potential future revisions of this designation, provided the available science at the time supports the designation. This would require the same procedures for public comment and full economic analysis as this final rule has followed. We note also that new areas found to be occupied by the endangered species and not included in this designation of critical habitat may be considered and included in the recovery plan being prepared for these species. Also, the species at those new locations will receive protection under sections 7 (pursuant to requirements for Federal agencies related to the ''jeopardy'' standard), 9, and 10 of the Act, regardless of whether the area is designated as critical habitat.

(15) *Comment:* Restricted access to private property limits the knowledge of other caves that may contain endangered karst invertebrates.

Our Response: The help of private property owners will be essential for the recovery of these endangered karst invertebrates. Any surveys for caves or cave invertebrates on private property are completely voluntary and at the discretion of the landowner. We appreciate the cooperation the Service has received from many landowners in Bexar County who allowed geologists and biologists access. We want to continue to build positive, voluntary relationships with private landowners for the conservation of listed species.

(16) *Comment:* Does critical habitat designation comply with the Federal Data Quality Act and Service Information Quality Guidelines?

Our Response: The U.S. Department of the Interior, of which the Fish and Wildlife Service is part, issued guidelines regarding data quality, in response to the passage of Public Law 106–554, referenced by the commenter. These guidelines, Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act For Fiscal Year 2001, became effective October 1, 2002. The Service's rulemaking procedure, inclusive of this designation of critical habitat, includes a comprehensive public comment process and imposes a legal obligation on us to respond to comments on the proposed action. These procedural safeguards can ensure a thorough response to comments on quality of information. The thorough consideration required by this process generally meets the needs of the request for correction of information process, under the Federal Data Quality Act and Service Information Quality Guidelines. In the case of rulemakings and other public comment procedures, where we disseminate a study analysis or other information prior to the final rulemaking, requests for correction are considered prior to the final action. The commenter did not specifically identify how the draft economic analysis or proposed rule might not meet the criteria that the guidelines require. Regardless, we believe that this process used the best and most reliable scientific and commercial data available regarding the designation and meets the criteria of the data quality guidelines.

(17) *Comment:* The proposed rule states that of about 400 caves known in Bexar County, only 57 contain the listed species. Have the other 343 caves been surveyed?

Our Response: The final rule has been updated to reflect the best available information on the total number of caves known from Bexar County (475 caves as of December 2002). Seventy four caves are currently known to contain listed species. Not all of the known caves in Bexar County have been adequately surveyed for invertebrates. It is likely that some of these caves will be found to contain one or more of the listed species. We also expect more caves to be discovered as additional surveys are completed.

Issue 3: Site-Specific Comments

(18) *Comment:* Many individual landowners commented that their property should be excluded from the critical habitat because it did not contain either the caves with the species or the primary constituent elements necessary for critical habitat. Several units have already been significantly disturbed from urban development and others are planned for development.

Response: The specific properties of most of the individual landowners who expressed these concerns have been either removed from the critical habitat designation, or the amount of their property included in the designation is now significantly reduced. This is a result of the reduction in area designated in all of the units based on the updated criteria used in the final rule to determine the areas for critical habitat (refer to the ''Methods'' and the ''Criteria Used to Identify Critical Habitat'' sections of the final rule for the specific changes). All of the revised critical habitat units designated in this final rule contain one or more of the primary constituent elements essential for the conservation of these endangered species. Conservation of some species may be dependent, in part, on habitat restoration activities in some areas that have been disturbed. Such activities may include, but are not limited to, restoration of native vegetation, control of invasive species, and the installation of berms to protect the cave opening from pollutants.

(19) *Comment:* The groundwater drainage basins for Black Cat Cave and Logan's Cave (Units 13 and 17, respectively) extend beyond the boundaries of their proposed critical habitat areas. These units should be expanded to include the appropriate drainage basins. The surface water drainage area for Springtail Crevice Cave (Unit 21) extends more than 6 km outside of its proposed critical habitat area. All, or at least a significantly greater percentage, of the lower drainage area within about 2 km of the cave should be included within the critical habitat area to better protect the cave from degradation of water quality due to urbanization.

Our Response: The subsurface drainage areas associated with the caves from units 13 and 17, and the surface drainage area for the cave in Unit 21, were delineated after the proposed rule was published (Veni 2002). These drainage areas extend outside of the boundaries of the proposed critical habitat boundaries. These areas were not included in this final determination because they were not identified in the proposed rule and, therefore, were not available for public comment. Although not included in the critical habitat designation, minimizing future impacts to the subsurface and surface drainage areas associated with these caves will likely be important for the conservation of the listed species in these caves. We have emphasized the importance of these areas in this final rule (*see* ''Critical Habitat Unit Descriptions'' section).

(20) *Comment:* The boundaries of Unit 20 are arbitrary, and 160 ha (395 ac) are not required to protect the species in Robber Baron Cave.

Our Response: The boundaries of Unit 20 have been redrawn based on the cave footprint and the subsurface drainage area of the cave and reduced to include 23 ha (57 ac). The amount of Zone 1 area included in the critical habitat designation was also reduced due to a lack of information on the importance of this area to the listed species within the cave. We also reduced the area included

in the critical habitat by using coordinate data to describe the boundaries, rather than roads as used in the proposed rule.

(21) *Comment:* Several commenters requested that certain units be excluded because there are other caves with critical habitat, located in the same karst fauna region and containing the same listed species, whose surface habitat is in a more natural and less degraded state. Therefore, the Service should omit those units with degraded surface habitat, because they will not be required for conservation of these species.

Our Response: As discussed above, all of the specific areas being designated contain one or more physical or biological features and primary constituent elements that are essential for the conservation of these endangered species and meet the definition of critical habitat as provided in section 3 of the Act. While some of the designated areas may not be in optimal condition, they are the only known locations for these species. Some of the areas may need intensive special management to restore or maintain some of the conditions important to these species. Conservation efforts involving the designated areas and other areas, including efforts taken to implement a recovery plan when one is adopted, will be dependent on the voluntary cooperation of landowners. This may include, but is not limited to, the cooperation of landowners who may voluntarily allow restoration efforts on their lands.

(22) *Comment:* Unit 1e should be divided into multiple smaller units for critical habitat.

Our Response: We agree and the final designation divides Unit 1e, previously 341 ha (842 ac), into three smaller Units 1e1, 1e2, and 1e3 for a total area of 50 ha (124 ac) (see Table 2 below).

(23) *Comment:* How can the Service designate critical habitat for Unit 19 and Genesis Cave when the urban development on the site has already resulted in take of the species in the cave? If the unit was designated based on the alleged existence of intact subsurface environment, then why are the vegetation buffer zones necessary?

Our Response: We determined that area designated as Unit 19 maintains the biological and physical features essential to the conservation of the species and supports one or more of the primary constituent elements. Thus it warrants inclusion in the final critical habitat designation regardless of whether ''take'' (as defined in Section 9 of the Act) of listed species in Unit 19 has already occurred. Critical habitat for Units 19 and 20 is designated only for the subsurface environment due to the significant surface degradation that has already occurred. We acknowledge that intense management will likely be needed in both of these units for conservation of the species. Identifying areas that contain features essential to the conservation of the species and that may require special management considerations or protection is a primary purpose of designating critical habitat.

(24) *Comment:* The Service should address how intensive management will provide nutrients and water to listed species in caves in heavily urbanized areas, such as units 12 and 19. The Service should also identify who should be responsible for this management, since critical habitat designation does not mandate special management or require removal of existing structures.

Our Response: Under the definition of critical habitat, all of the areas being designated may require special management. Caves in heavily urbanized areas, such as those within Units 12, 19, and 20, may need more intensive management for conservation of the species than some of the other units. We anticipate that the recovery plan for these species will address the specific management strategies recommended for long-term conservation of these species. This designation does not in any way require landowners to undertake any particular management actions for the designated critical habitat or the listed species. As part of the recovery process, we anticipate working cooperatively with landowners and other partners to provide the management needed for conservation.

(25) *Comment:* The proposed rule did not clearly indicate that surface disturbances within Units 19 and 20 would not have the potential to adversely modify sub-surface critical habitat and would not be regulated under Section 7. Similarly, what is the regulatory distinction between units with both primary constituent elements and those units with only one of the primary constituent elements.

Our Response: For critical habitat Units 19 and 20, we designated the subsurface area only as critical habitat, because of the level of disturbance that already has altered the surface habitat. Under section 7 of the Act, Federal agencies are required to insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existed of a listed species or result in the destruction or adverse modification of designated critical habitat. An action authorized, funded, or carried out by a Federal agency involving the surface of the land is subject to the consultation requirement of section 7, and related regulations at 50 CFR 402, if such action may affect a listed species or its designated critical habitat. The aspect of a consultation involving critical habitat would address the potential effects of a proposed Federal action on the primary constituent elements in the area covered by the consultation. For additional information about consultations and the potential Federal activities that could destroy or adversely modify critical habitat see the ''Section 7 Consultation'' section, below.

(26) *Comment:* Unit 12 should be deleted because the areas around Hairy Tooth and Ragin' Cajun caves are effectively protected. Big Springs Ltd., has established preserves around each cave and has developed a management plan for Hairy Tooth Cave and is considering a management plan for Ragin' Cajun Cave. Also, Unit 9 should be deleted or much reduced to exclude areas under a karst management plan by the University of Texas at San Antonio.

Our Response: In order to consider not including an area that is the subject of a management plan, we first evaluate the plan. Key factors we evaluate include whether the plan or agreement is legally binding, the status of implementation of the plan, whether the plan specifies the management needed to ensure that primary constituent elements are appropriately protected and, if needed, improved. Along with meeting other criteria, the plan also must include a timely schedule for implementation and outline the probability that the funding source or other resources necessary to implement the management will be available. The management plan for Hairy Tooth Cave (Unit 12), which we received after the close of the comment period, did not meet the above criteria. A management plan for Ragin' Cajun Cave was not provided to us.

The University of Texas at San Antonio submitted a draft karst management plan for consideration with respect to Unit 9. This draft plan represents a very positive step for conservation of the listed karst invertebrate species. However, without a final plan, we could not make a determination that the area is receiving adequate special management, in accordance with the criteria described above. (*See* the ''Lands Covered Under Existing Conservation Plans'' for additional information on our process.) Therefore, Unit 9 is part of the final designation, although its size has been reduced (for other reasons) from the

proposed amount of 71 ha (175 ac) to 16 ha (40 ac) in this final rule. The procedures for submitting management plans for possible exclusion of specific areas were clearly described in the proposed rule.

Issue 4: Economic Issues

(27) *Comment:* The draft economic analysis understates the economic impact from the critical habitat designation because it failed to adequately consider effects from: (1) Greater amounts of technical assistance and administrative tasks than estimated; (2) greater numbers of informal and formal section 7 consultations than estimated because of a vast understatement of Federal involvement in private projects; (3) increased difficulty in obtaining state and/or county approval for development; (4) project modifications and delays for planned developments; (5) development of biological assessments; (6) reduced property values; and (7) increased mitigation costs. Generally, the baseline approach used in the draft economic analysis underestimates the impacts to all development activities, whether or not Federal involvement is presumed.

Our Response: Minor modifications were made in the final economic analysis of the proposed rule to reflect increased technical assistance in one unit and to the cost of technical assistance related to Clean Water Act activities. We believe the estimates of formal and informal consultations in the final economic analysis reflect numbers that can be reasonably anticipated. We do not anticipate any increased difficulty in obtaining State or county approvals for development. While uncertainties about the impacts of the critical habitat designation and the perception that the designation will impose land use restrictions could temporarily foster this result, this effect is likely to be temporary in nature as the uncertainties and perceptions dissipate or become clarified over time.

We do not believe that critical habitat designation will impose additional project modifications and delays for projects, including preparation of biological assessments. Additional requirements associated with critical habitat designation apply solely to Federal actions, and since this designation only involves occupied habitat, then the section 7 requirements would have to be met pursuant to consideration of ''jeopardy standard'' regardless of the presence of critical habitat. We do not believe that the designation of critical habitat, when occupied by the listed species, should have any real effect on property value, because it only applies to those activities that involve a Federal action. However, we do recognize that there can be a perceived effect which could adversely affect property values. We will, through outreach and education, do all we can to correct this perception.

We believe mitigation costs associated with critical habitat designation were accurately estimated in the final economic analysis. The anticipated number of HCPs was increased from five to eight, and the cost of purchasing and managing mitigation lands due to the development of HCPs was estimated. The analysis used standard methods for analyzing the economic impacts. These methods have been used in past designations throughout the United States and have generally been found to be sufficient.

(28) *Comment:* The draft economic analysis is clearly prepared to show that minimal effects will be felt by the designation and should be rejected because it does not take an objective view of the matter under consideration. The information sources referenced do not include any discussions with private landowners.

Our Response: The analysis used standard methods for analyzing economic impacts. These methods have been used in past designations throughout the United States and have generally been found to be sufficient. Also, the final economic analysis of the proposed rule considers information gathered from interviews with individual property owners who submitted comments on the draft analysis.

(29) *Comment:* The level of predicted consultations appears to be based on the assumption that only commercial, as opposed to residential, development would trigger consultations, and the only anticipated Federal nexus for development was a party seeking an HCP.

Our Response: We apologize if the assumptions were not clear. We have clarified the assumptions in the final economic analysis.

(30) *Comment:* The draft economic analysis discounts entirely broader regional impacts, focusing only on the costs of consultation. The setting aside of land and delaying and increasing the costs of a variety of projects and activities will undoubtedly have a broader impact. In its draft economic analysis for the Kauai Cave wolf spider, the Service considered some of these broader economic impacts and determined that the impact of designating less than half the acreage proposed in Bexar County could be as high as $1.9 million. This difference in estimated costs is attributable to differences in methodology.

Our Response: We want to stress that the designation of critical habitat does not ''set aside'' land and does not create parks or preserves. We believe the economic analysis fairly estimated the costs of critical habitat designation in Bexar County (*see* our response to Comment 27). The final economic analysis of the proposed rule clarifies the methods used.

(31) *Comment:* Many landowners commented that their individual properties were of high economic value and the designation of critical habitat would substantially impact the future value and development potential of their properties. For this reason, the economic impact on individual property owners, in at least some instances, should outweigh the biological benefits of the designation of critical habitat.

Our Response: The regulatory requirements involving critical habitat apply only to those actions authorized, funded, or carried out by a Federal agency. We do recognize, however, that there can be a perceived effect which could influence property values, but believe any such effect is likely to be temporary in nature as the uncertainties and perceptions dissipate or become clarified over time. We will, through outreach and education, do all we can to correct this perception. We believe that the economic analysis appropriately considered the potential economic impacts of the proposed designation. Further, reductions in the amount of critical habitat in this final designation have resulted in a significant decrease in the amount of private land being designated.

(32) *Comment:* The draft economic analysis evaluates the effect of the total section 7 costs for individual units and then spreads those costs over the entire population of Bexar County. If these costs are attributed to the individual landowners in a single unit they would have a much greater impact. For instance, there are eight landowners in Unit 16, and the economic analysis is defective unless it measures the effects on those individual landowners.

Our Response: The analysis uses standard methods for analyzing the economic impacts of designating the areas included in our proposed rulemaking. These methods have been used in past designations throughout the United States and have generally been found to be sufficient. Time constraints prevented us from applying economic costs to individual property owners. We note also that the size of each unit designated is substantially reduced from what we proposed,

resulting from consideration of comments received and refinements in our methodology for identifying and mapping areas that meet the Act's definition of critical habitat. For instance, for Unit 16 our proposal included 61 ha (152 ac), whereas our final designation for that unit is 16 ha (40 acres).

(33) *Comment:* The draft economic analysis states that all of the critical habitat is over the Edwards Aquifer and then states which units are over the recharge zone. It isn't clear that only the units over the recharge zone get the protection measures that are listed. If the analysis assumed that all of the units get the same level of Edwards Aquifer protection, reevaluation of the numbers may be warranted.

Our Response: The draft economic analysis credited the protections only to those units in the recharge zone. We hope this point is adequately clarified in the final economic analysis of the proposed rule.

(34) *Comment:* For Unit 9, the draft economic analysis estimates only one technical assistance effort is anticipated and that no project modifications are anticipated. One request for assistance has already occurred, and probably one or two more will be required. In addition, a considerable amount of modification to University of Texas—San Antonio's plans in Unit 9 will have to occur to be in compliance with the proposed designation of critical habitat.

Our Response: The Service agrees that the effort was underestimated and corrections in the final economic analysis of the proposed rule have been made to reflect this. The Service agrees that if the proposed activities involve a Federal action, then modification of the proposed action may be needed. However, since this designation only involves occupied habitat, then the section 7 consultation requirements would have to be met (for the ''jeopardy standard'') regardless of the designation of critical habitat, and based on our experience in other situations, the outcome of such consultation is likely to be unchanged when it includes critical habitat.

(35) *Comment:* The estimates in Exhibit 4–4, page 44 (of the draft economic analysis) for anticipated costs to the Service, third parties, and the action agency do not cover the costs to date or future costs for UTSA in Unit 9, which are expected to be substantial.

Our Response: The final economic analysis of the proposed rule has been modified to incorporate expected costs to UTSA that would result from section 7 consultation related to development.

(36) *Comment:* The draft economic analysis does not adequately address the tremendous economic benefits of designating critical habitat, for example, the benefits to water supply protection for area residents.

Our Response: The value of economic benefits are difficult to estimate. The potential benefits of designating critical habitat are described subjectively in section 5 of the final economic analysis of the proposed rule.

(37) *Comment:* Landowners for Unit 12 provided specific value data to show a higher economic impact of the designation than provided in the economic analysis.

Our Response: The economic analysis includes consideration of a potential HCP for private development within this unit. Thus the comment is not inconsistent with the assumptions of the analysis. We do not expect costs to be greater than those represented by the formulation and implementation of the expected HCP.

Issue 5: Other Issues and Comments

(38) *Comment:* One commenter requested additional time so that the taxonomic description of a new subspecies of *Rhadine infernalis* can be completed.

Our Response: The Service is required to designate critical habitat for the Bexar County invertebrates within the time frame specified in the court settlement agreement. We have used the best scientific data available in making this designation.

(39) *Comment:* The City of San Antonio should be provided more exact cave locations for planning and protection of habitat, and to avoid inadvertent damage by the City.

Our Response: The Service and the City of San Antonio regularly exchange information for conservation of listed species. We understand that legally, the City may not be able to keep the cave locations confidential if we provided them, and having the locations generally known would pose an unacceptable risk of vandalism to the caves. Anyone may contact the Service for technical assistance to ensure their activities are consistent with conservation of these species. Helping make the public aware of the sensitive areas inhabited by these species is one of the most significant benefits of this designation. In addition to these critical habitat units, there are likely other localities where these species occur, of which we are not aware, or have not yet been discovered. Although they are not included in this designation, they are likely to be important for conservation of the species and should be considered in planning land management and development activities. We look forward to working with the City, and other partners, for management of their lands for the mutual benefit of the City's citizens and the conservation of the listed species.

(40) *Comment:* The Service should change the name of the Alamo Heights Karst Fauna Region so the public is not misled to believe the City of Alamo Heights is in critical habitat.

Our Response: The name of the Karst Fauna Region was taken from a report by George Veni and Associates (1994), which delineates separate geological regions in the San Antonio area. We recognize that the City of Alamo Heights is not within any of the units designated as critical habitat and regret any confusion the name of the faunal region might have caused. We have not used the Karst Faunal Region names in this final rule.

(41) *Comment:* Does critical habitat designation comply with Environmental Justice laws?

Our Response: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. We do not believe that the designation of critical habitat for endangered and threatened species results in any changes to human health or environmental effects on surrounding human populations, regardless of their socioeconomic characterization. As such, we do not believe that Executive Order 12898 applies to critical habitat designations.

(42) *Comment:* The required public notice to interested parties was not satisfied because numerous mailings were returned because of invalid zip codes.

Our Response: We made the best effort to notify all individual landowners involved directly. We sent the letters announcing the proposed rule and requesting comments to over 1,500 interested parties. Of those, about 200 were returned because of out-of-date addresses. We attempted to update addresses and remove duplicate addresses. We followed this mailing with over 1,200 postcards announcing the availability of the draft economic analysis and extension of the comment period. We regret that some of the attempts to contact interested parties

through the mail were unsuccessful. In addition to those efforts, the required public notices were published in the local newspaper. We also issued a news release, and there was coverage in the local newspaper and in other news media. Consequently, we believe we satisfactorily met the requirements for public notice to interested parties.

(43) *Comment:* The Texas Parks and Wildlife Department (TPWD) and the Department of Defense (DOD) submitted karst management plans for Government Canyon State Natural Area (GCSNA) and Camp Bullis, respectively, during the public comment period and requested that their properties be excluded from the final critical habitat designation.

Our Response: We reviewed the management plans submitted for both Camp Bullis and GCSNA. On the basis of our evaluation of these plans, we determined that they provide adequate special management and have not included the areas involved in the final designation of critical habitat. (See ''Lands Covered Under Existing Conservation Plans'' section for more information.)

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology. Only one of the eleven peer reviewers requested to review the proposed rule submitted comments. Overall the peer reviewer found the proposed rule to be an ''excellent, comprehensive document.'' The following specific comments were provided by the peer reviewer.

(44) *Comment:* The 36 ha (90 ac) zone of vegetation surrounding each known cave or cave complex should be adequate to preserve foraging habitat for cave crickets.

Our Response: In this final rule we have significantly reduced the areas around occupied caves that are included in the critical habitat designation. However, in most cases, the critical habitat boundaries were drawn to include a 50 m (164 ft) area plus a buffer, and best available information indicates that most cave crickets forage within 50 m (164 ft) of cave entrances (see ''Background'' section for additional information).

(45) *Comment:* The reviewer stated that habitat requirements described in the proposed rule seemed fine; however, the reviewer expressed concern that active management may be required to maintain natural surface habitat for the benefit of the subsurface environment. The reviewer also expressed concern about the encroachment of red imported fire ants and the impacts of predation on and competition with cave crickets and asked if there is a provision for dealing with this threat in the critical habitat units.

Our Response: We recognize the impact that fire ants likely have on listed karst invertebrates and the need for intense management to control this threat. The designation of critical habitat recognizes that these areas may need special management, however, the designation does not require any particular land management activities. Specific actions for management recommendations will likely be included in the future recovery plan for these species. We will work with landowners on a case-by-case basis to assist in land management provisions to protect the karst environment that supports the listed Bexar County invertebrates.

(46) *Comment:* There are no dispersal corridors between these habitat units to provide opportunities for movement of individuals between cave cricket populations.

Our Response: We know that dispersal corridors are likely important for the long-term maintenance of cave cricket populations (*see* Background section for discussion). However, we lack the necessary information to adequately quantify the specific locations of such corridors and therefore have not included them in this critical habitat designation.

(47) *Comment:* The commenter recommends deleting the reference in the ''Background'' section to a study concerning *Ceuthophilu gracilipes*, another species of cave crickets, because it is not appropriate in the context in which it was used.

Our Response: We deleted this reference, which had been included in our proposed designation, and updated the ''Background'' section of this final rule as suggested.

Summary of Changes From the Proposed Rule

On the basis of public comments, we reviewed our methodology for determining the extent of critical habitat designation for the Bexar County karst invertebrates. Consequently, we refined the boundaries of our original proposed critical habitat units for this final designation and clarified our description of the methodology and rationale used in defining the critical habitat boundaries. Overall, these changes resulted in designating 431 ha (1,063 ac) in 22 units as critical habitat, as compared to our proposed designation of 3,857 ha (9,516 ac) in 25 units. Table 2 provides a unit-by-unit list of the changes in this final rule, which are summarized below.

In the proposed rule, we delineated critical habitat boundaries on the basis of the following criteria: Known occupied caves; the cave footprint; surface/subsurface drainage areas associated with the occupied cave; the cave cricket foraging area plus a buffer; the contiguous karst deposit associated with the occupied cave; and a minimum of 36 ha (90 ac), where possible, to support dominant, subdominant, and rare plant species. In the final rule, we revised several of these criteria. We reduced the minimum area needed to support surface vegetation from 36 ha (90 ac) to 16 ha (40 ac), which is the minimum area we determined is needed to support 15 of the 24 plant species common to the Edwards Plateau, including the 7 species with the highest dominance values, as listed in Van Auken *et al.* (1980). We did not include an estimated area to support nine of the rarer plant species in our consideration of this minimum area, because of a lack of definitive information on the importance of such species to the functioning of the karst ecosystem. These nine species all have importance values of less than 1.0 and needed an area of approximately 20 to 80 ha (49 to 198 ac) to maintain their populations. We also reduced the criterion for the amount of contiguous karst deposit surrounding occupied caves. In the proposed rule, we delineated the unit boundaries to maximize the amount of contiguous karst deposit we estimated was necessary to provide for subsurface movement of listed species between and around occupied caves. However, because of lack of data allowing us to quantify the extent of subsurface karst needed to maintain populations of these species, in the final rule we delineated the boundaries to maximize the amount of subsurface karst deposit underlying the cave footprint, drainage areas, cave cricket foraging area plus buffer, and 16 ha (40 ac) vegetation area only. As a result of these revisions, the size of most units was reduced significantly (Table 2). (*See* ''Criteria Used to Designate Critical Habitat'' section for additional details.)

In addition to the changes in criteria, we also completely removed six units that had been proposed for designation (Units 1a, 1b, 1c, 1d, 10, and 11) from the final designation. Units 1a–1d were

located on the Government Canyon State Natural Area (GCSNA) and the majority of Unit 10 and all of Unit 11 were located on Department of Defense land at Camp Bullis. We did not include these six units in the final designation because we determined that the conservation plans for these areas provide adequate special management and protection, such that the areas do not meet the definition of critical habitat under section 3(5)(A)(i) of the Act. We also excluded these areas from designation based on section 4(b)(2). (See ''Lands Covered Under Existing Conservation Plans'' section.) Two of the nine species, the Government Canyon Bat Cave meshweaver and the Government Canyon Bat Cave spider, occur only in caves on the GCSNA. As a result of not including in the final designation the four units originally proposed on the GCSNA, no critical habitat is being designated for these two species.

As a result of applying our revisions of the criteria used to delineate the unit boundaries (as described above) we separated two units identified in the proposed rule into separate, smaller units in this final rule. Specifically, Unit 1e as described in the proposed rule has been separated into three smaller units (Units 1e1, 1e2, and 1e3), and we separated Unit 8 into Units 8a and 8b. Removing six units, separating Unit 1e into three smaller units and Unit 8 into two smaller units resulted in a net change of three fewer units in this final rule as compared to the proposed rule.

TABLE 2.—CHANGES IN UNIT NUMBER AND UNIT AREA BETWEEN PROPOSED AND FINAL RULES DESIGNATING CRITICAL HABITAT FOR SEVEN OF THE NINE BEXAR COUNTY KARST INVERTEBRATES

Proposed rule		Final rule	
Unit #	Total area of unit hectares (ha); acres (ac)	Unit #	Total area of unit hectares (ha); acres (ac)
1a	76 ha; 188 ac	1a	Government Canyon State Natural Area—excluded from critical habitat.
1b	47 ha; 116 ac	1b	
1c	47 ha; 116 ac	1c	
1d	47 ha; 116 ac	1d	
1e	341 ha; 842 ac	1e1	15 ha; 38 ac.
		1e2	16 ha; 40 ac.
		1e3	19 ha; 46 ac.
2	99 ha; 245 ac	2	37 ha; 92 ac.
3	63 ha; 154 ac	3	17 ha; 41 ac.
4	63; ha; 154 ac	4	16 ha; 40 ac.
5	47 ha; 116 ac	5	16 ha; 40 ac.
6	45 ha; 111 ac	6	16 ha; 40 ac.
7	50 ha; 123 ac	7	16 ha; 40 ac.
8	174 ha; 428 ac	8a	16 ha; 40 ac.
		8b	28 ha; 69 ac.
9	71 ha; 175 ac	9	16 ha; 40 ac.
10	367 ha; 906 ac	10	Camp Bullis—excluded from critical habitat.
11	1,273 ha; 3,143 ac	11	Camp Bullis—excluded from critical habitat.
12	105 ha; 258 ac	12	21 ha; 51 ac.
13	51 ha; 125 ac	13	16 ha; 40 ac.
14	173 ha; 426 ac	14	26 ha; 64 ac.
15	195 ha; 481 ac	15	34 ha; 85 ac.
16	61 ha; 152 ac	16	16 ha; 40 ac.
17	48 ha; 118 ac	17	16 ha; 40 ac.
18	40 ha; 100 ac	18	16 ha; 40 ac.
19	59 ha; 146 ac	19	5 ha; 12 ac.
20	160 ha; 395 ac	20	23 ha; 57 ac.
21	155 ha; 382 ac	21	27 ha; 68 ac.
Totals: 25 units; 3,857 ha; 9,516 ac		(1) 22 units; 431 ha; 1,063 ac.	

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

''Conservation,'' as defined by section 3(3) of the Act, means the use of all methods and procedures which are necessary to bring an endangered or a threatened species to the point that measures provided pursuant to the Act are no longer necessary.

Section 7(a)(2) of the Act requires that Federal agencies shall, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitats. Consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus (*i.e.*, Federal funding or authorization), and consequently critical habitat designation does not afford any additional regulatory protection or result in additional regulatory requirements under the Act in those circumstances. (*See* ''Effects of Critical Habitat

Designation'' for further discussion of consultations under section 7 of the Act.)

Critical habitat provides nonregulatory benefits to the species by informing the public and private sectors of areas that are important for species conservation, and where such conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public and land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people avoid causing accidental damage to such areas.

To be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (such as areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that, ''Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied'' by the listed species. In addition, our regulations (50 CFR 424.12(e)) state that ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4 (b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing rule for the species. Additional information may be obtained from a recovery plan (if available), articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished reports, and discussion with experts.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Since much of the cave-forming rock is located on private property in areas that have not been adequately surveyed, additional populations for some of these species are likely to exist and may be discovered over time. We recognize that our designation of critical habitat for these species may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, this critical habitat designation should not be interpreted to mean that habitat outside the designation is unimportant or may not be required for conservation of the species. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning and recovery efforts if new information available to these efforts calls for a different outcome.

Habitat of the listed species that is not included in this critical habitat designation will continue to be subject to conservation actions implemented by Federal agencies under section 7(a)(1) of the Act, which directs Federal agencies to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Habitat outside the designation also will continue to receive regulatory protections afforded by the section 7(a)(2) jeopardy standard, which requires each Federal agency to insure, in consultation with the Service, that any action it authorizes, funds, or carries out is not likely to ''jeopardize the continued existence'' of a listed species. To achieve this objective, action agencies must consult with us whenever a Federal action ''may affect'' a listed species. This requirement applies regardless of whether critical habitat is designated, and Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

The applicability of the section 9 section take prohibition is not altered by the designation of critical habitat. Section 9 makes it unlawful for any person to ''take'' (defined broadly in section 3 as ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'') a listed wildlife species. Under section 10(a) of the Act, the Service may issue a permit to a non-Federal entity authorizing ''take'' if certain conditions are met. These conditions include a finding by the Service that such take is incidental to otherwise legal conduct, and that the take ''will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.'' The issuance criteria for such take permits also require applicants to minimize and mitigate the effects of their permitted actions, to the maximum extent practicable.

Primary Constituent Elements

In accordance with section 3(5)(A) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management consideration or protection. As described in our regulations, these features include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing of offspring, and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Our regulations at 50 CFR 424.12(b) further direct that, when considering the designation of critical habitat, we are to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species, and we are to list known primary constituent elements with the critical habitat description. Our regulations describe known primary constituent elements in terms that are more specific than the

description of physical and biological features. Specifically, our regulations state that primary constituent elements may include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species of plant pollinator, geological formation, vegetation type, tide, and specific soil types.

Using the best scientific information available to us, we have determined that the primary constituent elements required by the karst invertebrates consist of: (1) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation) and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and (2) the biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) living in and near the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

Information Sources

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12, respectively), we used the best scientific information available to determine critical habitat areas that contain the physical and biological features and primary constituent elements that are essential for the conservation of the karst invertebrate species. This information included: (1) Peer-reviewed scientific publications; (2) the final listing rule for the nine Bexar County karst invertebrate species (65 FR 81419); (3) unpublished field data, survey reports, notes, and communications from qualified biologists or experts; (4) published descriptions of the regional geology (Soil Conservation Service 1962; Veni 1988, 1994, 2002); and (5) recent digital orthophotographs (March 2001) and parcel maps (generated in early 2002) obtained from the Bexar County Appraisal District to determine the current status of habitat surrounding the known occupied caves.

In the proposed rule, we referred to Veni's 1994 karst zone maps to ensure that the majority of the lands within each proposed unit overlaid a contiguous deposit of karst-bearing rock either known to contain the listed species (Zone 1) and/or having a high probability of suitable habitat for the listed species (Zone 2) to maintain subsurface connectivity for species movement throughout the contiguous karst deposit. Recognizing that a significant amount of additional information has become available, either as a result of the discovery of new caves containing the listed species, or additional biological surveys conducted in previously mapped caves and/or as a result of the release of information not available at the time of the 1994 report, we contracted with George Veni & Associates to re-evaluate and, where necessary, redraw the boundaries of the Bexar County karst zones. The resulting report (Veni 2002) also estimated the surface and subsurface drainage areas associated with each occupied cave in Bexar County with the exception of several caves which occur on cliffs and several for which sufficient information was not available. We received the report during the public comment period and used the information to ensure that each unit overlaid a contiguous deposit of karst-bearing rock and that the estimated drainage basins associated with each occupied cave were, where possible, designated as critical habitat. Contiguous deposits of karst-bearing rock associated with occupied caves subterranean spaces were included to protect subsurface voids believed to maintain populations of the listed species and provide for species movement. The drainage basins associated with occupied caves were included in order to protect the quantity and quality of water entering the karst ecosystem which, in turn, maintains stable temperatures and high humidities required by the listed species and protects the system from contamination.

Information on the status and location of occupied caves was obtained from presence/absence survey reports submitted during project consultations conducted with the Service under section 7 of the Act, annual reports on research and conservation activities conducted under a section 10(a)(1)(A) scientific permit, section 6 species status reports, and literature published in peer reviewed journals. Survey reports and scientific permit annual reports typically contained cave location information in the form of a cave location indicated on a U.S. Geological Survey topographic maps and/or UTM coordinates, and a map of the cave footprint.

To improve the accuracy of our cave location information, we submitted a request to the Texas Speleological Survey (TSS) for any available digital location data (UTM coordinates) for Bexar County caves known to contain one or more of the nine endangered species. TSS is a non-profit corporation established in 1961 to collect, organize, and maintain information on Texas caves and karst for scientific, educational, and conservation purposes, and to support safe and responsible cave exploration, and is affiliated with the Texas Memorial Museum, the Texas Speleological Association, and the National Speleological Society. TSS provided the majority of the digital location data, and reviewed and confirmed our location data for caves where no digital information was available. The precision of the locations for which digital location data were available ranges from 1 m to 10 m (3ft to 33 ft) and data documented on topographic maps was estimated to be accurate to within 10 m to 20 m (33 ft to 66 ft). This variability in precision was taken into account when delineating unit boundaries. We further agreed that any requests for such information would be directed to TSS as owners of the data. The precise location of the caves within each unit is not specified on the critical habitat maps in order to protect these caves from potential vandalism and to protect private landowners from potential increases in trespassing.

Criteria Used To Delineate Critical Habitat

Using the best scientific data available (as summarized in the ''Background'' section), we developed the following criteria to identify and delineate lands for designation as critical habitat: caves known to be occupied by one or more of the listed karst invertebrate species; the cave footprint; the surface and subsurface drainage areas associated with each cave, to the extent possible; a 150 m (492 ft) area around each cave to encompass the cave cricket foraging area of 50 m (164 ft) on the surface, measured from the cave entrance(s) and a 100 m (328 ft) area around the cave cricket foraging area to buffer the animal community, including cave crickets, against the effects of urban edges and red imported fire ant invasion; and, where possible, a minimum of 16 ha (40 ac) around each cave or cave cluster. This minimum 16 ha core area consists of a minimum 13 ha (33 ac) needed to support at least 15 of 24 species of the vegetative community commonly found on the Edwards Plateau, plus a 3 ha (7 ac) area to buffer the vegetative community against edge effects associated with urban disturbances. This surface area also acts to incorporate areas of contiguous karst deposit around an occupied cave, which likely contains the listed species that occupy the cave.

In several instances (Units 2, 13, and 21), the surface or subsurface drainage basin associated with the occupied cave, as defined by Veni (2002), extends outside of the area originally designated in the proposed rule and therefore was not included in the final rule (*see* ''Critical Habitat Unit Descriptions'' section). Also, in several instances (Units 1e1, 3, 6, 8b, and 17), the cave, cave footprint, and portions of the cave cricket foraging area plus buffer, the drainage basins, and the 16-ha (40-ac) vegetative area are located on lands protected under the La Cantera HCP which were not included in the designation (see ''Unit Description'' and Lands Covered Under Existing Conservation Plans'' sections). The critical habitat area encompassing Robber Baron Cave (Unit 20) includes both the known and estimated extent of the cave's footprint. This cave is a complex maze cave consisting of approximately 1.51 km (0.94 mi) of passages known within a square area approximately 100 m (328 ft) on each side (Veni 1988). Prior to the extensive development that has occurred in the area, the cave's footprint was estimated to extend at least 100 m (328 ft) farther east to a water well, 600 m (1,969 ft) southwest to a now-sealed, extensive maze cave and about 1.2 km (0.75 mi) to the southwest to another well (Veni 1988). Exploration and mapping of these possible passages is continuing under the direction of the Texas Cave Management Association, which owns the cave entrance.

Critical Habitat Delineation

Lands designated as critical habitat for the seven endangered karst invertebrates occur in 22 separate units, with a total area of approximately 431 ha (1,063 ac). The lands within the critical habitat units are under private, city, and State ownership. Table 3 lists the known occupied caves, the total critical habitat unit area, land ownership, and the listed species that occur within each designated unit. Table 4 shows the listed species and the critical habitat unit(s) where they occur.

Each critical habitat unit contains one or more of the primary constituent elements needed by the karst invertebrate species. The ''Critical Habitat Unit Descriptions'' section (below) provides a description of lands within each unit and a description of how unit boundaries were delineated.

Areas within the boundaries of mapped units that have existing human-constructed, above-ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures are considered to be critical habitat since subterranean spaces containing these species or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures also are also not considered critical habitat because they do not contain the primary constituent elements. Although not considered to be critical habitat, these landscaped areas may provide some foraging area for cave crickets and other trogloxenes which are an important source of nutrients to the karst ecosystem.

TABLE 3.—KNOWN OCCUPIED CAVES, LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH CRITICAL HABITAT UNIT DESIGNATED FOR ONE OR MORE OF THE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES

Unit	Known occupied caves in unit	Total area of unit	Ownership	Listed species in unit
1e1	Pig Cave San Antonio Ranch Pit	15 ha (38 ac)	Private, city	*Rhadine exilis* *R. infernalis* *Batrisodes venyivi*
1e2	Continental Cave	16 ha (40 ac)	City	*R. infernalis*
1e3	Creek Bank Cave Tight Cave	19 ha (46 ac)	Private, city	*R. exilis*
2	Logan's Cave Madla's Drop Cave	37 ha (92 ac)	Private	*Cicurina madla* *R. exilis* *R. infernalis*
3	Helotes Blowhole* Helotes Hilltop Cave*	17 ha (41 ac)	Private	*C. madla* *R. exilis* *R. infernalis* *B. venyivi*
4	Kamikazi Cricket Cave	16 ha (40 ac)	Private	*R. exilis* *R. infernalis*
5	Christmas Cave	16 ha (40 ac)	Private	*C. madla* *R. exilis* *R. infernalis* *B. venyivi*
6	John Wagner Ranch Cave No. 3*	16 ha (40 ac)	Private, city	*R. exilis* *R. infernalis*
7	Young Cave No. 1	16 ha (40 ac)	Private	*R. exilis*
8a	Three Fingers Cave	16 ha (40 ac)	Private	*R. exilis* *R. infernalis*
8b	Hills and Dales Pit* Robber's Cave	28 ha (69 ac)	Private, city	*C. madla* *R. infernalis* *R. exilis*
9	Mastodon Pit	16 ha (40 ac)	State	*R. exilis*
12	Hairy Tooth Cave Ragin' Cajun Cave	21 ha (51 ac)	Private	*R. exilis*
13	Black Cat Cave	16 ha (40 ac)	Private	*R. exilis*
14	Game Pasture Cave No. 1 King Toad Cave Stevens Ranch Trash Hole Cave	26 ha (64 ac)	Private	*R. infernalis*
15	Braken Bat Cave Isopit	34 ha (85 ac)	Private	*Cicurina venii* *R. infernalis*

TABLE 3.—KNOWN OCCUPIED CAVES, LAND OWNERSHIP AND LISTED SPECIES THAT OCCUR WITHIN EACH CRITICAL HABITAT UNIT DESIGNATED FOR ONE OR MORE OF THE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES—Continued

Unit	Known occupied caves in unit	Total area of unit	Ownership	Listed species in unit
	Obvious Little Cave			
	Wurzbach Bat Cave			
16	Caracol Creek Coon Cave	16 ha (40 ac)	Private	*R. infernalis*
17	Madla's Cave*	16 ha (40 ac)	Private	*C. madla* *R. infernalis*
18	Mattke Cave	16 ha (40 ac)	Private	*R. infernalis*
	Scorpion Cave			
19	Genesis Cave	5 ha (12 ac)	Private	*R. infernalis*
20	Robber Baron Cave	23 ha (57 ac)	Private	*Texella cokendolpheri* *Cicurina baronia*
21	Hornet's Last Laugh Pit	27 ha (68 ac)	City, Private	*R. exilis*
	Kick Start Cave			
	Springtail Crevice			
Totals				
22	31 caves	431 ha (1,063 ac)		

*Indicates caves and associated lands protected by management under La Cantera's Section 10 permit; these are not included in this designation or in the area figures.

TABLE 4.—LIST OF THE NINE ENDANGERED BEXAR COUNTY KARST INVERTEBRATES AND THE CRITICAL HABITAT UNITS WITHIN WHICH THEY OCCUR

Species name	Critical habitat unit(s) of occurrence
Braken Bat Cave meshweaver (*Cicurina venii*).	15
Cokendolpher cave harvestman (*Texella cokendolpheri*).	20
Government Canyon Bat Cave meshweaver (*Cicurina vespera*).	No critical habitat designated.
Government Canyon Bat Cave spider (*Neoleptoneta microps*).	No critical habitat designated.
Madla Cave meshweaver (*Cicurina madla*).	2, 3, 5, 8b, 17
Robber Baron Cave meshweaver (*Cicurina baronia*).	20
Beetle (*Rhadine exilis*)	1e1, 1e3, 2, 3, 4, 5, 6, 7, 8a, 8b, 9, 12, 13, 21
Beetle (*Rhadine infernalis*)	1e1, 1e2, 2, 3, 4, 5, 6, 8a, 8b, 14, 15, 16, 17, 18, 19
Helotes mold beetle (*Batrisodes venyivi*).	1e1, 3, 5

Of the 74 caves known to contain one or more of the listed species, 43 were not included in the critical habitat designation. These 43 caves, and the reasons they were not designated, are described in the following summary.

Two caves, referred to as ''unnamed cave ½ mile N of Helotes'' and ''5 miles NE of Helotes,'' were not included in the proposed or final designation because their precise locations are unknown.

One cave, Crownridge Canyon Cave, was confirmed as a new location for one of the listed species during the public comment period. This cave was not included in this final determination because deadlines negotiated under the court-ordered settlement did not allow us to re-propose critical habitat, and thus there was not opportunity for the public to comment on its inclusion. Although we cannot include Crownridge Canyon Cave in this designation of critical habitat, we consider the cave and the associated karst ecosystem to be important to the conservation of the species. Because the cave is known to be occupied, it will receive protection under sections 7 (under the ''jeopardy standard'' standard), 9, and 10 of the Act.

Of the ten occupied caves associated with the La Cantera HCP, none were included in the proposed designation, and we have not included them in the final designation of critical habitat. We authorized two caves for take of *C. madla* under La Cantera's section 10(a)(1)(B) permit associated with the HCP. These two caves were heavily impacted as a result of authorized take and are not expected to contribute to the species' recovery. The other eight caves associated with the La Cantera HCP are protected within five karst management areas that will be perpetually managed and monitored in accordance with the conservation needs of the species. In most cases, these karst management areas were not considered adequate as stand alone preserves. Therefore, where appropriate, we included lands surrounding these occupied caves and associated management areas as part of the designation of critical habitat, as these lands provide physical and biological features that are essential to the conservation of the species. These areas include: Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac); Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac); and Madla's Cave and the surrounding approximately 2 ha (5 ac). These eight caves and their associated karst management areas are being protected under the HCP, and we have not included them in this critical habitat designation (see ''Lands Covered Under Existing Conservation Plans'' section). Because of their geographic relationship to the rest of the critical habitat unit, it was difficult to show some of these areas in our mapping process. Thus, although some of these areas occur within the mapped area, they are not included in a legal sense through language in the final determination.

We did not include seven occupied caves in the Government Canyon State Natural Area (GCSNA), which is owned by the Texas Parks and Wildlife Department (TPWD), and 23 occupied caves on the Department of Defense's (DOD) Camp Bullis, in this critical habitat designation. Five of these caves were known to be occupied at the time of the proposed rule and were included in the proposed rule. The presence of listed species in the other two caves was confirmed by TPWD during the public comment period. During the public comment period, the Service received

and approved karst management plans submitted by each agency. These plans commit TPWD and DOD to long-term management and monitoring strategies that for the listed species and their habitat on their respective lands. The ''Lands Covered Under Existing Conservation Plans'' section explains the reasons why we did not include these areas in this designation of critical habitat.

Critical Habitat Unit Descriptions

Unless otherwise indicated in the unit descriptions below, each unit encompasses the following components: one or more occupied caves; the footprint of each cave; a 150 m (492 ft) area around the cave to encompass the cave cricket foraging area (50 m (164 ft)) and a buffer of 100 m (328 ft) against the effects of urban edges and red imported fire ant invasion; the surface and subsurface drainage areas associated with each cave as estimated in Veni (2002), to the extent possible; and, where possible, a minimum of 16 ha (40 ac) of surface vegetation encompassing each cave or cave cluster. Also, where possible, each unit was delineated to include contiguous deposits of Zone 1 karst-bearing rock as defined by Veni (2002) underlying the cave cricket foraging area plus buffer, the drainage areas, and the vegetative area.

As explained previously (*see* ''Critical Habitat Delineation'' section), some of the units include human-constructed, aboveground, impervious structures (e.g., buildings, paved roads) that do not contain the primary constituent elements and are not considered to be critical habitat. They are included within the mapped unit because subsurface areas under these structures are considered to be critical habitat, since subterranean spaces containing the karst species, or transmitting moisture and nutrients through the karst ecosystem, extend underneath these existing human-constructed structures. Within the units, landscaped areas associated with existing human-constructed structures also are not considered to be critical habitat because they do not contain the primary constituent elements, although they may provide some foraging area for cave crickets and other trogloxenes that are an important source of nutrients to the karst ecosystem.

Critical habitat boundaries are described as the area bounded by coordinates provided as geographic longitude and latitude coordinate pairs (e.g., –98.7612682, 29.4363049), referenced to North American Horizontal Datum 1983 (NAD 83). Coordinates were derived from 2001 digital orthophotographs obtained from the Bexar County Appraisal District. A description of each unit designated, including the current status of the lands in and around the unit, is presented below.

Unit 1e1

Unit 1e1 contains two occupied caves (Table 3). The surface of the unit consists primarily of undeveloped land. The majority of the unit is privately owned, with a small portion occurring on the City of San Antonio's Iron Horse Canyon tract, which was purchased under the Proposition 3 program. Proposition 3 is the Parks Development and Expansion Venue Project passed by San Antonio voters in 2000 for preservation of undeveloped Edwards Aquifer Recharge Zone lands. This unit is surrounded by undeveloped, privately owned land, including the City of San Antonio's Iron Horse Canyon tract and the La Cantera Canyon Ranch karst management area, which is being managed in perpetuity for the conservation of the species under a section 10(a)(1)(B) permit. (See ''Lands Covered Under Existing Conservation Plans'' section.) This unit contains all of the components described above, with the exception of a portion of the groundwater drainage area and cave cricket foraging area and buffer associated with San Antonio Ranch Pit extends onto La Cantera's Canyon Ranch karst management area, which is being managed for the conservation of the listed karst invertebrates.

Unit 1e2

Unit 1e2 contains one occupied cave (Table 3). The surface of the unit consists primarily of undeveloped lands with a few small roads. The entire unit occurs on the City of San Antonio's Iron Horse Canyon property. This unit contains all of the components described above.

Unit 1e3

Unit 1e3 contains two occupied caves (Table 3). The surface of the unit consists of undeveloped land with several small roads. The majority of the land is privately owned with a portion of the unit occurring on the City of San Antonio's Iron Horse Canyon property. This unit is surrounded by undeveloped, privately owned land, the City of San Antonio's Iron Horse Canyon property, and TPWD's Government Canyon State Natural Area. This unit contains all of the components described above, with the exception of a portion of the 21 ha (51 ac) subsurface drainage area shared by both caves that occurs on TPWD's Government Canyon State Natural Area, which we did not include in the designation (*see* ''Lands Covered Under Existing Conservation Plans'' section).

Unit 2

Two occupied caves occur within this Unit 2 (Table 3). The surface of Unit 2 consists of large, privatelyowned tracts, which appear to be primarily undeveloped with the exception of several small buildings and two or three small roads. The unit is surrounded by primarily undeveloped privately owned land. This unit contains all of the components described above, with the exception of a small portion of the 80-acre subsurface drainage basin associated with these caves that extends outside of the western boundary of this unit. This area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment. Although not included in the critical habitat area, minimizing impacts to the subsurface drainage area associated with these caves may be important for the conservation of the species in that cave.

Unit 3

Unit 3 consists of large tracts of primarily undeveloped privately owned land. La Cantera's Helotes Blowhole/Helotes Hilltop karst management area (approximately 10 ha (25 ac)) occurs entirely within this unit and contains two occupied caves (Table 3). This management area was acquired by La Cantera under their Section 10(a)(1)(B) permit, which requires that these caves and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include these caves and associated management areas in the designation of critical habitat (see ''Lands Covered Under Existing Conservation Plans'' section). This unit was delineated to encompass the portion of the cave cricket foraging area plus buffer, the 16 ha (40 ac) vegetation area, and the subsurface drainage basin shared by the occupied caves that extends outside of the area protected under the La Cantera HCP. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock and a small portion of Zone 3 as defined in Veni (2002), which underlies part of the cave cricket foraging area and buffer.

Unit 4

Unit 4 includes one occupied cave (Table 3). Lands surrounding Unit 4 consist of relatively large undeveloped tracts with some subdivided residential tracts that appear to be partially developed. The majority of the unit

overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer areas. This unit contains all of the components described above.

Unit 5

Unit 5 contains one occupied cave (Table 3). The surface of Unit 5 consists of a large tract of privately owned, undeveloped land and several smaller tracts developed with homes and an associated residential road. The unit is bordered to the north and northwest by large tracts of undeveloped land and bordered on the remaining sides by smaller tracts with some residential development. This unit contains all of the components described above. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock, with a small portion of Zone3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 6

La Cantera's John Wagner Ranch Cave #3 karst management area is within this unit, and contains one occupied cave (Table 3). This cave, and approximately 1.6 ha (4 ac) surrounding the cave, were acquired by La Cantera under their section 10(a)(1)(B) permit. The permit requires that the cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave, and the associated lands being managed under the permit, in this designation of critical habitat (see ''Lands Covered Under Existing Conservation Plans'' section). The surface of Unit 6 consists of several subdivided, large-lot tracts with homes and their associated roads and a large, undeveloped tract to the north owned by the City of San Antonio as part of the Thrift tract, which was purchased under the Proposition 3 program. The unit is surrounded on most of three sides by the City-owned Thrift tract and is adjacent to large-lot residential development to the south and southwest. This unit was delineated to encompass the portion of the cave cricket foraging area plus buffer, the subsurface drainage basin, and 16 ha (40 ac) vegetation area that extends outside of the area protected under the La Cantera HCP. The majority of Unit 6 overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 7

Unit 7 contains one occupied cave (Table 3). The surface of Unit 7 consists of relatively large, privately owned, undeveloped tracts with a few residential roads. The unit is surrounded by large, primarily undeveloped, privately-owned land. This unit contains all of the components described above.

Unit 8a

Unit 8a contains one occupied cave (Table 3). The surface of Unit 8a consists of large tracts of undeveloped land with a few small roads. About half of the unit is privately-owned. The other half lies within the City of San Antonio's Medallion tract, which was purchased under the Proposition 3 program. The unit is surrounded by undeveloped, privately owned lands and the City's Medallion property. This unit contains all of the components described above.

Unit 8b

Unit 8b contains two occupied caves (Table 3). The surface consists of large, primarily undeveloped tracts. A large portion of this unit occurs on the City of San Antonio's Medallion property, which was purchased under the Proposition 3 program. This unit also contains a portion of La Cantera's Hills and Dales Pit karst management area, which contains Hills and Dales Pit, one of the two occupied caves within the unit (Table 3). Hills and Dales Pit and 28 ha (70 ac) surrounding the cave were acquired by La Cantera under a section 10(a)(1)(B) permit, which requires that the cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave and associated lands in this designation of critical habitat (see ''Lands Covered Under Existing Conservation Plans'' section). This unit was delineated to encompass the portion of the 33-acre surface drainage basin and cave cricket foraging area plus buffer associated with Hills and Dales Pit that extends outside of the 28-ha management area protected under the La Cantera HCP, as well as all of the components associated with Robber's Cave as described above.

Unit 9

Unit 9 contains one occupied cave (Table 3). The surface of the unit consists of a large tract of undeveloped land owned by the University of Texas at San Antonio (UTSA). The unit is bordered to the north by Loop 1604, a major highway, to the west by the UTSA campus, and to the south and east by currently undeveloped land. A portion of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock with the remainder being defined as Zone 2. This unit contains all of the components described above.

Unit 12

Unit 12 contains two occupied caves (Table 3). The unit is surrounded by residential development. Within the unit, there are multiple residential lots surrounding a tract of undeveloped land. The lots appear to be partially developed. Several residential roads and one major roadway occur within the unit. As explained above, these human-constructed features are not considered critical habitat, but subsurface areas under these structures are part of the designation of critical habitat. This unit contains all of the components described above.

Unit 13

Unit 13 includes one occupied cave (Table 3). The surface of the unit consists primarily of large privately owned tracts with some residential development. Bulverde Road, a major roadway, bisects the western portion of the unit. Unit 13 is bordered by dense residential development to the northwest and large-lot residential development to the northeast. The lands to the south, southeast, and southwest consist of large, primarily undeveloped tracts. This unit contains all of the components described above, with the exception of a portion of the subsurface drainage area, which extends outside of the western boundary of the unit underneath an area of existing residential development. This drainage area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment, and because of the legal settlement agreement to complete this designation by a specific deadline, we did not have time to republish the critical habitat proposal to include this area and allow public comment on it. Although this area is not included in the critical habitat area, minimizing impacts to the subsurface drainage area associated with Black Cat Cave may be important for the conservation of the species in that cave.

Unit 14

Unit 14 contains three occupied caves (Table 3). The surface of the unit consists of several large privately owned, undeveloped tracts and is surrounded by large tracts of currently undeveloped land. This unit contains all of the components described above.

Unit 15

Unit 15 contains four occupied caves (Table 3). The unit occurs within and is surrounded by large-lot residential development. This unit contains all of the components described above.

Unit 16

Unit 16 includes one occupied cave (Table 3). The surface of this unit consists of several large privately owned, undeveloped tracts. The unit is surrounded on three sides by privatelyowned undeveloped land. Loop 1604, a major roadway, goes through the eastern part of the unit and lies above the eastern portion of the subsurface drainage area associated with the cave. This unit contains all of the components described above.

Unit 17

Unit 17 consists of several large privately owned undeveloped tracts with a few small roads and is surrounded by privately owned undeveloped land. La Cantera's Madla's Cave management area occurs within this unit and contains the one occupied cave in the unit (Table 3). This cave and the approximately 2 ha (5 ac) surrounding the cave is under a conservation easement acquired by La Cantera under a section 10(a)(1)(B) permit, which requires that this cave and the surrounding lands be managed in perpetuity for the conservation of the species. We did not include this cave, as well as the the associated lands covered by the permit, in the designation of critical habitat (*see* ''Lands Covered Under Existing Conservation Plans'' section). This unit was delineated to encompass the portions of the cave cricket foraging area plus buffer and 16 ha (40-ac) vegetative area that extend outside of the management area protected under the La Cantera HCP. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock with a small portion of Zone 3, which underlies part of the cave cricket foraging area and associated buffer area.

Unit 18

Unit 18 includes two occupied caves (Table 3). The surface of this unit consists of large privately owned undeveloped tracts and several smaller residential lots developed with homes. Unit 18 is surrounded on three sides by residential and commercial development and on the fourth side by a large undeveloped tract. This unit contains all of the components described above. The majority of the unit overlies a contiguous deposit of Zone 1 karst-bearing rock and a small portion of Zone 3 as defined in Veni (2002), which underlies part of the cave cricket foraging area and buffer.

Unit 19

This unit contains one cave (Table 3). Genesis Cave is one of only two locations currently known to contain *Rhadine infernalis infernalis* (Table 1) and is therefore particularly important for the conservation of the species. Genesis Cave is the deepest explored cave in Bexar County, extending below the water table, and has been mapped down to 78 m (256 ft) (Veni 1988).

The majority of the land within this unit has been developed for residential and/or commercial uses. As a result of the extensive existing development within this unit, the surface vegetation has been reduced and degraded and only small vegetated areas remain. Therefore, this unit does not contain the primary constituent element of a healthy surface plant community and was delineated to encompass the cave, its footprint, the surface and subsurface drainage area, and a portion of the cave cricket foraging area with potential for being restored to native vegetation. The cave is surrounded by approximately 2 acres of undeveloped land, which is adjacent to several small parcels of undeveloped land. We believe that these areas, by themselves, are not sufficient to maintain a healthy plant community and that intensive management will likely be needed to provide nutrients and water to the listed species in this cave. However, these small undeveloped areas surrounding the cave may provide foraging area for crickets inhabiting Genesis Cave and should be managed to benefit the species.

Unit 20

This unit contains one occupied cave (Table 3). Robber Baron Cave is the only known location for two of the nine listed species (Table 1) and because the cave is located within an area that is geologically isolated from other karst areas in the San Antonio region, these two species are not likely to occur outside this area (Veni 1994). Therefore, this cave is particularly important for the conservation of these species. Robber Baron Cave is by far the longest cave in Bexar County consisting of approximately 1.51 km (0.94 mi) of passages known within a square area approximately 100 m (328 ft) on each side (Veni 1988). Prior to the extensive development that has occurred in the area, the cave's footprint was estimated to extend at least 100 m (328 ft) farther east to a water well, 600 m (1,969 ft) southwest to a now-sealed extensive maze cave, and about 1.2 km (0.75 mi) to the southwest to another well (Veni 1988). The estimated footprint of the cave now extends underneath numerous residential and commercial developments. The Texas Cave Management Association (TCMA) now owns and manages the cave entrance and about 0.2 ha (0.5 ac) surrounding the opening. TCMA, in cooperation with the Service's Partners for Fish and Wildlife Program, is currently working to replace the existing cave gate, which consists of a concrete bunker created to deter access, with a new gate that will facilitate exchange of air and nutrients into the cave as well as restrict access. TCMA also plans to restore the grounds immediately surrounding Robber Baron Cave to a more natural state and repair the perimeter fence to regulate access.

The majority of the surface land within this unit has been developed for residential and/or commercial uses. As a result of the extensive existing development within this unit, the surface vegetation has been reduced and degraded and only small vegetated areas remain. Therefore, this unit does not contain the primary constituent element of a healthy surface plant community. The unit was designated to encompass the cave; the cave footprint, both the known and estimated extent; and the surface and subsurface drainage area. Vegetation surrounding the cave entrance consists primarily of nonnative species used for residential landscaping. Intensive management will likely be needed to provide nutrients and water to the listed species in this cave.

Unit 21

Unit 21 contains three occupied caves (Table 3). The majority of this unit occurs within the City of San Antonio's Stone Oak property, purchased under the Proposition 3 program. Several residential lots also occur within the unit boundaries. This unit contains all of the components described above, with the exception of the majority of the over 5,600-ac surface drainage area associated with Springtail Crevice Cave as defined by Veni (2002). This drainage area was not included in this final determination because it was not identified in the proposed rule and therefore was not available for public comment, and because of time deadlines associated with the legal settlement agreement to complete this designation, we did not have time to republish the critical habitat proposal to include this area and allow public comment on it. Although not included in the critical habitat area, minimizing impacts to the surface drainage area associated with this cave may be important for the conservation of the species in that cave.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a list species or result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Activities on Federal lands that may affect the listed karst invertebrates or their designated critical habitat will require section 7 consultation with the Service. Federal agencies also must consult with the Service under section 7 with regard to actions they authorize (permit) or fund that occur on private, State, or other non-Federal lands if the action may affect listed species or designated critical habitat. Actions authorized, funded, or implemented by Federal agencies that affect listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Federal actions that do not affect the species or designated critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If we issue a biological opinion, resulting from a section 7 consultation, concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we also would provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect any of the nine karst invertebrates or the designated critical habitat will require consultation under section 7 of the Act. Activities on private, State, or other non-Federal lands that involve a Federal action such a permit (*e.g.,* a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a Construction General permit from the U.S. Environmental Protection Agency), or Federal funding (*e.g.,* from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, Natural Resources Conservation Service, or Housing and Urban Development) also will continue to be subject to the section 7 consultation process. Federal actions that do not affect listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities which, if undertaken, may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of any of the seven karst invertebrates is appreciably reduced. These activities may occur outside the designated critical habitat and still result in destruction or adverse modification; for example, activities in the drainage area or locations adjacent to the critical habitat that impacts the karst environment within the designated critical habitat. Activities that may directly or indirectly adversely affect critical habitat for these karst invertebrates include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation, with the exception of landscaping associated with existing human-constructed, above-ground, impervious structures, occurring in any critical habitat unit, whether by burning, mechanical, chemical, or other means (for example, wood cutting, grading, overgrazing, construction, road building, pipelines, mining, herbicide application);

(2) Alteration of the surface topography or subsurface geology within any critical habitat unit that results in significant disruption of ecosystem processes that sustain the cave environment. This may include, but is not limited to, such activities as filling cave entrances or otherwise reducing airflow, which limits oxygen availability; modifying cave entrances, or creating new entrances that increase airflow and result in drying; altering natural drainage patterns (surface or subsurface) in a manner that alters the amount of water entering the cave or karst feature; removal or disturbance of native surface vegetation that may alter the quality or quantity of water entering the karst environment; soil disturbance that results in increased sedimentation in the karst environment; increasing impervious cover that may decrease water quantity entering the karst

environment within any critical habitat unit (*e.g.,* paving over a vegetated area); and altering the entrance or opening of the cave or karst feature in a way that would disrupt movements of raccoons, opossums, cave crickets, or other animals that provide nutrient input; or otherwise negatively altering the movement of nutrients into the cave or karst feature;

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other harmful material into or near critical habitat units that may affect surface plant and animal communities or that affects the subsurface karst ecosystem.

(4) Pesticide or fertilizer application in or near critical habitat units that drain into these karst features or that affect surface plant and animal communities that support karst ecosystems. Careful use of pesticides in the vicinity of karst features may be necessary in some instances to control nonnative fire ants. Guidelines for controlling fire ants in the vicinity of karst features are available from us (*see* **ADDRESSES** section);

(5) Activities within caves that lead to soil compaction, changes in atmospheric conditions, or abandonment of the cave by bats or other fauna;

(6) Activities that attract or increase access for fire ants, cockroaches, or other invasive predators, competitors, or potential vectors for diseases or parasites into caves or karst features within the critical habitat units (*e.g.*, dumping of garbage in or around caves or karst features); and

(7) Release of certain biological control organisms within or adjacent to critical habitat areas. Biological control organisms include, but are not limited to, predaceous or parastoid (*i.e.*, an organism that lays its eggs in the body of another animal) vertebrates or invertebrates, fungi, bacteria, or other natural or bioengineered organisms.

Not all of the identified activities will necessarily result in the destruction or adverse modification of critical habitat. They indicate, however, the potential types of activities that will require section 7 consultation in the future and, therefore, that may be affected by the designation of critical habitat. To properly portray the effects of critical habitat designation, we must compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. All of the areas designated as critical habitat are known to contain one or more caves occupied by one or more of the listed karst invertebrates. Therefore, all of the actions described above as potentially adversely modifying critical habitat are also likely to adversely affect the listed species. Federal agencies already are required to consult with us on activities in areas where the species may be affected to ensure that the actions of the agency are not likely to jeopardize the continued existence of the species. Therefore, we do not expect that this designation of critical habitat will result in a regulatory burden above that already in place because of the presence of the listed species.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, please contact Robert T. Pine, Supervisor, Austin Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program (*see* **ADDRESSES** section).

Lands Covered Under Existing Conservation Plans

The first portion of the definition of critical habitat in section 3(5)(A) of the Act states that critical habitat means: ''(i) The specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' As part of our process of developing a critical habitat designation, we evaluate existing management plans to determine whether an area may require special management or protection and thus qualifies as critical habitat. The Service believes that special management or protection is not required if an area is covered by a legally operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species.

We consider a current plan to provide adequate special management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

When we assess the likelihood of whether the special management and protection will be implemented, we consider whether: (1) A management plan or agreement exists that specifies the special management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the special management will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the special management and provide the protection, as demonstrated, for example, by a legal instrument providing enduring protection and special management of the areas that contain the primary constituent elements.

When we evaluate whether an action is likely to be effective, we consider whether: (1) The plan specifically addresses the special management needs, with respect to the conservation and enhancement, where possible, of the primary constituent elements; (2) actions similar to those being proposed or used as special management and protection have been successfully used in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the special management and protection; and (4) adaptive management principles have been incorporated into the plan.

If an area provides physical or biological features essential to the conservation of the species, and also is covered by a plan that meets these criteria described above, then such an area does not constitute critical habitat as defined by section 3(5)(A)(i) of the Act because the primary constituent elements found there are not in need of special management.

With the ''may require special management or protection'' clause, Congress determined that certain areas should not be included in a designation despite the fact that they contain features essential to the conservation of the species. However, it has been suggested that the need for any management of physical or biological features, regardless of whether that

management is in place, qualifies an area as meeting this part of the definition of critical habitat. This interpretation ignores the question of whether the special management or protections are or are not required. Under this interpretation, any area on which an action needs to be taken to provide special management consideration or protection for a species constitutes critical habitat for that species. We believe that this interpretation of section 3(5)(A)(i) is incorrect because it essentially reads the special management clause out of the definition. Thus, under this interpretation, critical habitat would include all areas within the range of the species on which are found features essential to the conservation of the species, notwithstanding the additional requirement in the language of the Act. In contrast, our interpretation of the language, as described above, gives independent meaning to the special management clause because there will be some areas with features essential to the conservation of the species that will not require special management because they already have such management.

La Cantera Habitat Conservation Plan

Section 10(a) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered or threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan. A permit may not be issued unless the conservation plan submitted to the Service meets certain requirements, as provided in section 10(a)(2)(A) of the Act. For example, the conservation plan must specify what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps. After an opportunity for public comment on the conservation plan, the Service may issue the permit provided we determine that certain conditions, as specified in section 10(a)(2)(B), are met. For instance, the Service must find that the taking will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

In our proposed rule for designating critical habitat for the karst invertebrates, we considered the lands covered by the La Cantera Habitat Conservation Plan. (A notice of availability for the HCP was published on July 2, 2001, opening a 30-day period for public comment. The section 10 permit was issued on October 31, 2001.) The goals of the HCP are to minimize and mitigate for the potential negative effects of constructing and operating commercial, light industrial, recreational, and residential development near and adjacent to currently occupied habitat of the endangered karst invertebrates, and to contribute to conservation of the covered species and other listed and non-listed cave or karst fauna. To accomplish these goals, the plan requires the following special management and protection:

- Routine inspections will be conducted and will include, but may not be limited to: Signs of vandalism and unauthorized entry; damage to cave gates, fencing, and/or signs; damage to vegetation; presence of fire ants or other nonnative species; dumping; and any other conditions that could affect the listed species or the karst ecosystem. Native vegetation will be maintained or improved within the karst management area. A baseline survey will be conducted and repeated every 10 years thereafter.
- A fire ant control and treatment program will be implemented. Boiling water will be used within 50 m of the cave footprint. Boiling water and/or chemical bait will be used between 50 and 150 m. Baits may be ''broadcast'' more than 150 m from a cave footprint according to protocols outlined in the HCP. The control and monitoring of fire ants will occur at least twice a year over the entire karst management area. Documentation of mounds will also occur during routine inspections. An increase in treatment will occur if mounds exceed stated numbers in the HCP.
- Cave security fences will be installed around all caves according to specifications outlined in the HCP, and some caves will have cave gates installed. Signs will be placed along all fences to further minimize the potential for vandalism and unauthorized access to the management areas. These areas will have officially designated points of access or entry. Entry gates will remain locked at all times when unattended. Cave security fences and their signs and cave gates will be maintained and routinely inspected; barbed-wire fences will be inspected at least every 6 months. Necessary repairs to fencing, gates, and signs will be initiated within one week if any of these are found to have incurred damage.
- In addition, the plan requires the control of impacts from increasing population densities of white-tailed deer and other mammals on surface plant and animal communities. Cattle, other domestic and/or exotic livestock, and pets will not be allowed in the karst management areas unless approved by the Service. No fertilizers, herbicides, or pesticides will be used within the management areas unless approved by the Service. No new roads, new utilities, or other development, including stormwater or wastewater lines, treatment ponds, structures or other facilities, are allowed within the karst management area boundaries unless allowed for under the HCP or approved by the Service. Motorized vehicles will be prohibited from the management areas at all times, unless utilized to facilitate operation, monitoring, and maintenance. No public access, including hiking, biking, and horseback riding, will be allowed unless approved by the Service. Karst management and monitoring plans will be developed for each management area and will include monitoring of the baseline conditions (biological and physical conditions of the area prior to the other scheduled activities), surface and subsurface animal species, and surface vegetation, as well as measurement of cave and surface climates.
- An adaptive management strategy will be used in the implementation of the plan. On the basis of this strategy, if monitoring or other information indicates that the goals or requirements of the HCP are not being met, then adjustments will be made as outlined in the HCP.

As explained in the proposed rule (67 FR 55064), based on our evaluation of the adequacy of special management considerations and protection provided by the La Cantera HCP, and in light of the definition of critical habitat in section 3(5)(A) of the Act, we did not include the five karst management areas established by La Cantera as part of the proposed designation of critical habitat. These areas were established as a requirement of their section 10(a)(1)(B) permit, which is titled ''Environmental Assessment and Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of Two Troglobitic Ground Beetles (Rhadine exilis and Rhadine infernalis) and Madia Cave Meshweaver (Cicurina madia) During the Construction and Operation of Commercial Development on the Approximately 1,000-Acre La Cantera Property, San Antonio, Bexar County, Texas, dated October 11, 2001.'' These five karst management areas

include: (1) Canyon Ranch (including Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave and the surrounding approximately 30 ha (75 ac) within critical habitat Unit 1e, as proposed; (2) Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac), within Unit 3 as proposed; (3) John Wagner Cave No. 3 and the surrounding approximately 1.6 ha (4 ac), within Unit 6 as proposed; (4) Hills and Dales Pit and the surrounding approximately 28 ha (70 ac), within Unit 8 as proposed; and (5) Madla's Cave and the surrounding approximately 2 ha (5 ac), within Unit 17 as proposed.

We believe that the La Cantera HCP meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. First, the HCP provides a conservation benefit to the species through the protection of eight caves, each occupied by one or more of the three listed species covered under the HCP. The various management actions (*e.g.*, installation of security fences, controls on numerous potential human impacts, fire ant control and treatment program) will provide conservation benefits. Second, the HCP provides assurance that the conservation management strategies and actions will be implemented. These caves and associated management areas are protected, in perpetuity, by appropriate legal mechanisms, and will be managed, in perpetuity. The HCP provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each karst management area. Also, based on our review of available information, estimates, and budgets, La Cantera committed to provide funding for all management, monitoring, repair, and adaptive management actions described in the HCP up to an aggregate of $38,032 per year, as adjusted for inflation. Third, to provide assurances that the conservation strategies and measures will be effective, the HCP was developed on the basis of the best available information, and La Cantera is required to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the HCP are not being met, then adjustments will be made as appropriate. La Cantera is required to submit a report of all management and monitoring activities conducted each year to the Service annually.

For the reasons described above, the five karst management areas established by La Cantera and being provided for under their HCP are not included in this designation of critical habitat because they are receiving adequate special management considerations and protection, and therefore do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Camp Bullis Conservation Plan for Karst Species

During the comment period for the proposed designation of critical habitat, the U.S. Army Garrison, Fort Sam Houston submitted a ''Management Plan for the Conservation of Rare and Endangered Karst Species, Camp Bullis, Bexar and Comal Counties, Texas,'' for the 23 caves on Department of Defense (DOD) property that are known to contain listed karst species. These 23 caves were included within Units 10 and 11 of the proposed designation of critical habitat. The Camp Bullis conservation plan calls for the following special management considerations and protection:

- The Army will identify karst management areas (KMAs) and determine the appropriate size and shape of each KMA necessary to incorporate the biological and physical components needed for the conservation of the species (*e.g.*, cave footprint, surface and subsurface drainage areas associated with the occupied cave, cave cricket foraging area, surface plant and animal community). The KMAs will be preserved in perpetuity within the limits possible through the authority of Camp Bullis and its operational and mission requirements. The Plan stipulates that should Camp Bullis ever be transferred in whole or in part, local Army officials will request that the Secretary of the Army, or other appropriate authority, review and incorporate provisions from this management plan into the property disposal procedures in order to transfer responsibility for appropriate management of any former Camp Bullis karst management areas to all subsequent owners by deed recordation or other binding instrument.
- Fire ants will be controlled. Only boiling water will be used up to 50 m from a cave's footprint, chemical fire ant bait or boiling water, if feasible, will be used between 50 and 150 m, and ''broadcasting'' of bait may be used at distances greater than 150 m. Pesticide and fertilizer use will be prohibited within KMAs unless specifically authorized. Special management will protect important sources of nutrients for KMAs, prevent siltation and/or entry of other contaminants into KMAs, dprevent vandalism, dumping of trash, and unauthorized entry into caves. Certain caves may require cave gates and/or security fences.
- In addition, the Army will: (1) Continue conducting karst and biospeleological surveys; (2) complete hydrogeologic studies on KMAs; (3) continue studies on the ecology of karst species; (4) develop educational programs to raise awareness and encourage protection of karst ecosystems by Camp Bullis personnel and the public; (5) monitor all KMAs to determine success or failure of management actions; and (6) document all fauna and flora encountered during monitoring. Monitoring will occur every 1–3 years based on changes in the extent that Camp Bullis uses areas in or around the cave.
- Finally, only native xeriscape plants will be used to landscape for new construction within 150 m of a KMA. Two of the caves are near the boundary of Camp Bullis. We intend to form a partnership with Camp Bullis and the private landowners to gain their support for protecting the habitat that is on private lands near these caves.

In addition to the activities outlined in their plan, Camp Bullis began conducting surveys for cave and karst features and karst fauna in 1993 and plans to complete karst surveys of the entire approximately 28,000-acre installation in 2003. Camp Bullis submitted a draft karst management plan to us in 1999 and has been implementing measures to conserve listed karst invertebrate species since then. These measures include, but are not limited to, control of red-imported fire ants, control of unauthorized access through cave gating, and limiting training activities in areas around occupied caves. The 2002 karst management plan, received and approved by the Service during the comment period, includes these and additional measures to conserve the listed species and their ecosystems on Camp Bullis.

Based on our evaluation of the Camp Bullis conservation plan for the karst invertebrates, we find that it provides adequate special management considerations and protection for the species occurring within Units 10 and 11 that were proposed for designation as critical habitat. We believe that Camp Bullis' karst management plan (Plan) meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. The Plan

provides a conservation benefit to the species through the protection of twenty-three caves occurring on Camp Bullis. Each cave is occupied by one or more of the listed species. Under the terms of a memorandum of understanding (MOU) signed by Camp Bullis and the Service on December 20, 2002, Camp Bullis agreed to protect, manage and monitor caves containing listed species as specified in the Plan within the limits possible through the authority of Camp Bullis and its operational and mission requirements. The Plan stipulates that should Camp Bullis ever be transferred in whole or in part, local Army officials will request that the Secretary of the Army, or other appropriate authority, review and incorporate provisions from this management plan into the property disposal procedures in order to transfer responsibility for appropriate management of any former Camp Bullis karst management areas to all subsequent owners by deed recordation or other binding instrument. The Plan provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each occupied cave. The Plan also stipulates that funding for the management actions will be programmed in the Environmental Project Requirements database which is submitted annually. To provide assurances that the conservation strategies and measures will be effective, Camp Bullis has agreed to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the Plan are not being met, then adjustments will be made as appropriate. Under the Plan, Camp Bullis is required to submit a report of all management and monitoring activities conducted each year to the Service annually.

For the reasons described above, we have not included the Camp Bullis lands in proposed Units 10 and 11 in this final designation of critical habitat because these areas do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Government Canyon State Natural Area Conservation Plan

During the comment period for the proposed rule, Texas Parks and Wildlife Department (TPW) submitted the ''Karst Management and Maintenance Plan for Government Canyon State Natural Area, Bexar County, Texas.'' Government Canyon State Natural Area (GCSNA) was designated as a state natural area in 1993. As of 2002, GCSNA includes a total of 8,199 acres. As a designated natural area, GCSNA's mission is to protect the outstanding natural attributes found on the property, including caves inhabited by the listed karst invertebrates. Surveys for cave and karst features and cave fauna have been ongoing at GCSNA since 1994. To protect the listed karst invertebrates, GCSNA began treating for fire ants around the occupied caves in 1999 and has continued to implement this and other conservation measures benefitting the listed species and their ecosystem. Such on-going measures include, but are not limited to, ongoing surveys for cave and karst features and cave fauna, control of fire ants, and control of unauthorized access. As described in the following paragraphs, the 2002 karst management plan, received and approved by the Service during the comment period, includes these and additional measures to conserve the listed species and their ecosystems on GCSNA.

TPWD committed to limiting human use to a trail system and 12 primitive campsites on the portions of the property overlying the Edwards Aquifer. At least two surveys a year for fire ant mounds around cave openings will be conducted with fire ant mound densities being recorded within 50 m of cave entrances. Searches for fire ant mounds also will be made during routine maintenance inspections. Control will be conducted twice a year, with an increase in frequency if more than 80 mounds are located within 50 m of a cave entrance. Boiling water will be used to control fire ants within 50 m of the footprint of any cave. Boiling water or chemical baits will be used between 50 and 100 m from the footprint. Baits may be ''broadcast'' in areas greater than 150 m, and the bait use protocol is outlined in the management plan.

Wildfire fighting will, to the fullest extent practical, avoid direct or indirect impacts to caves. Pesticide and herbicide use will be prohibited unless expressly agreed to by all partners involved in the special management. Monthly monitoring and inspections of all endangered species caves will occur. Data collection will include: evidence of vandalism, evidence of vegetation damage due to off-trail use, condition of the cave gate and/or security fence, evidence of feral hogs and/or white tailed deer, presence of fire ants, and results of recent fire ant treatments. Cave cricket counts will be performed yearly at all caves. Through photographic documentation, changes in vegetation structure and composition around caves will be monitored. Volunteers holding valid scientific research and recovery permits for karst invertebrates will assist in monitoring listed and unlisted species. An annual report of activities will be submitted by October 31st of each calendar year.

Based on our evaluation of the Karst Management and Maintenance Plan for Government Canyon State Natural Area, we find that it provides adequate special management considerations and protection for Units 1a, 1b, 1c, and 1d that were proposed for designation as critical habitat. We believe that TPWD's karst management plan submitted for GCSNA meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. The Plan provides a conservation benefit to the species through the protection of seven caves, each occupied by one or more of the listed species. As a designated natural area, GCSNA's mission is to protect the outstanding natural attributes found on the property, including caves inhabited by the listed karst invertebrates. The property will be protected in perpetuity and used in a sustainable manner for scientific research, education, aesthetic enjoyment, and appropriate public use, not detrimental to the primary purposes for which the property was acquired. The Plan provides assurances that the conservation strategies and actions will be implemented by outlining a schedule of management and monitoring activities to be conducted at each occupied cave. Surveys for cave and karst features and cave fauna have been ongoing at GCSNA since 1994. The Plan also stipulates that funding for the management actions will be programmed into GCSNA's operating budget annually. To provide assurances that the conservation strategies and measures will be effective, TPWD has agreed to conduct periodic surveys of the cave environment, as well as the surface plant and animal community to determine the status of these environments and the need for adaptive management. If monitoring or other information indicates that the goals or requirements of the Plan are not being met, then adjustments will be made as appropriate. Under the Plan, TPWD is required to submit a report of all management and monitoring activities conducted each year at GCSNA to the Service annually. Therefore, we are not including these units in this final designation of critical habitat because

these areas do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

Exclusions Under Section 4(b)(2)

As described above, based on our evaluation of the adequacy of special management and protection that is provided in current management plans involving the karst invertebrates, and in accordance with section 3(5)(A)(i) of the Act, we have not included the areas covered by the La Cantera HCP, or Units 1a, 1b, 1c, 1d, 10 and 11 as proposed, in this final designation of critical habitat. To the extent that special management considerations and protection may be required for these areas, and they therefore qualify as critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We believe exclusion under section 4(b)(2) of the Act applies to the areas encompassed in the special management and protection plans for the La Cantera HCP, GCSNA, and Camp Bullis.

La Cantera HCP

The principal benefit of any designated critical habitat is that Federal activities that may affect the habitat require consultation under section 7(a)(2) of the Act. Consultation is designed to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat resulting from an action authorized, funded, or carried out by a Federal agency. Where HCPs are in place and lands are covered by a section 10(a)(1)B) permit, our experience has shown that any benefit of designation of such lands as critical habitat is small to none when the areas concerned are occupied by the species, because the occupied areas already are subject to section 7 consultation based on the ''jeopardy standard.'' Permitted HCPs are designed to ensure the long-term survival of listed species within the area covered by the permit. Under an HCP, an areas that might be designated as critical habitat already will be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo consultation. While this consultation may not look specifically at the issue of the likelihood of adverse modification or destruction of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many HCPs. For these reasons we believe that designation of critical habitat has little or no benefit in areas covered by HCPs.

The benefits of excluding HCPs from designation as critical habitat are significant. Benefits of excluding HCPs include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs take considerable time—sometimes years—to develop and, upon completion, become the basis for regional conservation plans that are consistent with the conservation of covered species. Many of these plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that exclusion encourages the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions that we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

Specifically, for the lands covered by the La Cantera HCP, in a letter dated April 18, 2002, Mr. Alan Glen, representing the La Cantera Development Company, noted the following. ''The significant mitigation measures and conservation benefits provided by the La Cantera HCP would likely not have been realized through a section 7 consultation. As a result, it is highly unlikely that the inclusion of the areas covered by the HCP in a designation of critical habitat would provide any benefit for the listed species. In contrast, the benefits of excluding the La Cantera HCP from the designation are expected to be significant for many of the same reasons identified in the Quino analysis set forth above. La Cantera and the Service worked together for years to produce the first HCP covering any of the listed Bexar County invertebrate species, and as the Service has acknowledged, the result is a model that can be followed throughout the region. The imposition of even a minor regulatory burden that will not yield substantial benefits for the species may hinder the orderly and effective implementation of the La Cantera HCP and, perhaps more importantly, discourage similar efforts to conserve the listed species by other parties in the future.''

We have weighed the small benefit, if any, of including the lands in the HCP against the benefits of exclusion, which include the benefit of relieving both the property owners and the Service of the extra time and funds associated with the additional layer of approvals and regulation, including reinitiation of the intra-Service section 7 consultation, together with the encouragement of conservation partnerships. We have determined that the benefit of excluding the land covered by the La Cantera HCP from designation as critical habitat outweighs the benefits of including the areas, so we have excluded them from designation on the basis of section 4(b)(2) of the Act.

Government Canyon State Natural Area and Camp Bullis

The benefits of designating as critical habitat the State-owned GCSNA lands in proposed Units 1a, 1b, 1c, and 1d, and the DOD-owned Camp Bullis lands in proposed Units 10 and 11, are small to none. As previously stated, the listed species and their habitat on both Camp Bullis and the GCSNA already are being managed and protected under Service-approved karst management plans. These management plans provide long-term conservation benefits to the listed species on these properties. The only additional protection for the primary constituent elements that could occur on GCSNA would be the requirement for Federal agencies to consult on any action they permit, fund, or carry out, that may affect designated critical habitat, were it designated, on the State-owned lands. However, all of the caves on the Natural Area that could have been included in the designation are known to be inhabited by one or more species of the endangered karst invertebrates. Therefore, the section 7(a)(2) jeopardy standard for Federal agency actions already is in place and Federal agencies are required to consult with the Service on any action that may affect a listed species. Since take of the species would almost certainly be a result of harm to the habitat, no added section 7(a)(2) protections would be provided by designation of critical habitat in this situation.

Also, the primary purpose for GCSNA is for the protection and stewardship of outstanding natural attributes of statewide significance under Policy, TAC 59.61–59.64. Given this stated purpose, it is highly unlikely that the State would allow any federally funded or permitted project that would harm the habitats associated with the caves on the Natural Area. Therefore, it is highly unlikely that section 7(a)(2) consultation would ever be required. Also, GCSNA's karst management plan stipulates that TPWD intends to coordinate with the Service on any activities on GCSNA that may impact listed species or their habitat. Further, in the unlikely event that the State should ever propose an action that lacks Federal agency involvement and that might result in incidental take of the listed karst invertebrates on the Natural Area, an incidental take permit would be required under section 10(a)(1)(B) of the Act. Section 10(a)(1)(B) requires that the applicant minimize and mitigate, to the maximum extent practical, the impacts to listed species. While the Service would have to complete an intra-Service section 7(a)(2) consultation to ensure that issuing the permit did not jeopardize the listed species or adversely modify critical habitat, were it designated, it is highly unlikely that the designation of critical habitat on the Natural Area would add any measures that would increase the minimization and mitigation of harm to the habitat.

Camp Bullis' mission is to provide field training and support for military activities in south Texas. The mission requirements demand the presence of large tracts of undeveloped land for training operations. The management plan discussed above represents the cumulative efforts of Camp Bullis to eliminate, mitigate, and prevent harm to the federally and state-listed karst species. Camp Bullis has an approved and signed Integrated Natural Resource Management Plan (INRMP). This INRMP provides yet another layer of protection for the natural resources on Camp Bullis. The INRMP includes specific goals for managing the karst resources on Camp Bullis to ensure protection and enhance understanding. This includes: (1) Management of water resources on Camp Bullis, including wetlands, that protects the Edwards Aquifer Recharge Zone; (2) supporting research to measure the relationship between species diversity and the amount of water flowing into the recharge zones; and (3) continuing to support work done by the U.S. Geological Survey. Given these layers of protection for the habitats associated with the occupied caves, inclusion of Camp Bullis lands in this designation of critical habitat would have little or no benefit to the listed karst species.

The benefits of excluding areas within GCSNA and Camp Bullis from designation are significant. If special management and protection plans were not implemented as called for the in the GCSNA conservation plan, the State would be required to complete section 10(a)(1)(B) habitat conservation planning for any action that might result in incidental take of the listed species. In the case of Camp Bullis, section 7(a)(2) consultation would be needed on any action likely to result in the destruction or adverse modification of designated critical habitat. However, since both areas are implementing special management and protection plans that preclude take of listed species and harm to the associated habitat, no HCPs or consultations are needed. Completion of section 10(a)(1)(B) permits can require extensive lengths of time, in some cases, years and thousands of hours. Likewise, completion of formal section 7(a)(2) biological opinions may require completion of biological assessments that can require extensive lengths of time and thousands of hours to complete. Both processes may require the employment of consultants. Thus, by having special management and protection plans in place that preclude actions that might harm species and associated habitat, there is a great savings, in terms of both money and time, and a great benefit, to the Service, the State, and the DOD.

In the situations of GCSNA and Camp Bullis, the State and the DOD assumed the additional cost of putting in place and implementing special management for endangered species in their resource management plans. The special management far exceeds the protections that would be afforded by designation of critical habitat. If these areas were included in the critical habitat designation, the cooperative partnership that motivated these two agencies to assume the cost and work would be damaged. Since the added special management and protection measures for endangered karst invertebrates on the part of the State is voluntary, the designation could result in an adverse change to the cooperative partnership with the Service and changes to future management and protection. The primary constituent elements and species will greatly benefit from the implementation of these plans.

We believe recovery of listed species is best accomplished through partnerships and voluntary actions. If areas that are subject to adequate management plans are not excluded from designations of critical habitat, there will be a chilling effect on other potential partners. There is a great incentive to not having Federal regulations encumbering non-Federal land. It is likely that many potential partners will not assume the cost and work associated with implementing voluntary special management and protection if critical habitat is designated regardless of their efforts. As a result, listed species and their habitat will not have the benefits of voluntary special management. We believe that the benefits of excluding these areas already under special management as a result of voluntary action by the landowners greatly outweighs the benefits of including such areas as part of critical habitat. We believe that excluding these areas is beneficial to these and other species.

In the case of Camp Bullis, there also are national security benefits from exclusion of Units 10 and 11 from critical habitat designation which exceed any benefits from including these areas. In a prior consultation under section 7 of the Act, the Service

found: ''All available land at Camp Bullis is being used for training for the Army, Air Force, Marine Corps, Reserve components, San Antonio police, FBI, U.S. Marshals and Academy Health Sciences.'' Training includes search and rescue, escape and evasion, survival, mechanized infantry maneuvers, urban warfare tactics, reconnaissance in enemy territory, parachute operations and combat assault landing, air base ground protection and low-level helicopter assault and maneuvering. An average of over 36,000 Army and other services' medical personnel undergo field medical training at Camp Bullis, and total military training use averages over 720,000 person-days annually.

The space and facilities for this training at Camp Bullis cannot readily be duplicated elsewhere. The benefits of avoiding adverse impacts to the U.S. Army's mission if training were delayed due to the need to reinitiate section 7 consultation as a result of concerns for irreversible or irretrievable commitment of resources with respect to the agency's action (section 7(d)) exceed the benefits of designation of proposed Units 10 and 11 as critical habitat.

Based on section 4(b)(2) and the consideration of the information described above, we find that the benefits of excluding the areas covered by the La Cantera HCP, proposed Units 1a, 1b, 1c, and 1d of the GCSNA lands, and proposed Units 10 and 11 on Camp Bullis, greatly exceed the limited benefits of including these areas in the designation of critical habitat. Benefits of exclusion include implementation of special management and protection plans that provide protection and management far in excess of any protection afforded by the Act through designation of critical habitat, by encouraging the formation of partnerships that will be the key to recovery of the species, by reducing the time and money that would have been needed to complete regulatory processes under sections 7(a)(2) and 10(a)(1)(B) of the Act, and by ensuring that the U.S. Army's role in protecting the Nation is not impaired.

We may exclude areas from the critical habitat designation unless the Secretary determines, ''based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in extinction of the species concerned.'' Here, we have determined that the exclusion of the La Cantera HCP, GCSNA, and Camp Bullis lands will not result in the extinction of the species. First, activities authorized, funded, or carried out by Federal agencies in these areas that may affect the listed karst invertebrates will still require consultation under section 7 of the Act, based on the requirement that Federal agencies ensure that such activities are not likely to jeopardize the continued existence of listed species. This requirement applies even without critical habitat designation on these lands. Second, these three entities have committed to protecting and managing these endangered species in accordance with their special management plans and natural resource management objectives. In short, they have committed to greater conservation measures on these areas than would be available through the designation of critical habitat. With these natural resource measures, we have concluded that these exclusions from critical habitat will not result in the extinction of these karst invertebrates.

We have determined that, with the exceptions noted above, for the rest of the areas included in the designation of critical habitat in this final rule, the benefits of exclusion do not outweigh the benefits of critical habitat designation. As part of this determination, we conducted an economic analysis of the proposed rule designating critical habitat for these species.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude any area from designation as critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such an area as critical habitat, unless we determine, on the basis of the best scientific and commercial data available, that the failure to designate such area will result in the extinction of the species concerned. Following the publication of the proposed critical habitat designation, we completed a draft economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available to the public for review on November 21, 2002 (67 FR 70203) and we accepted comments on the proposed rule and the draft economic analysis of it until December 23, 2002.

In making our final critical habitat designation, we utilized the economic analysis and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearing and comment period. No areas proposed as critical habitat were excluded or modified because of economic impacts. This analysis first identifies land use activities within or in the vicinity of those areas being proposed for critical habitat that are likely to be affected by section 7 of the Act. To do this, the analysis evaluates a ''without section 7'' scenario and compares it to a ''with section 7'' scenario. The ''without section 7'' scenario constitutes the baseline of this analysis. It represents the level of protection currently afforded the species under the Act, absent section 7 protective measures, which includes other Federal, State, and local laws. The ''with section 7'' scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. To do this, the analysis adopts a ''with and without critical habitat approach.'' This approach is used to determine those effects found in the upper-bound estimate that may be attributed solely to the proposed designation of critical habitat. Specifically, the ''with and without critical habitat'' approach considers section 7 impacts that will likely be associated with the implementation of the jeopardy provision of section 7 and those that will likely be associated with the implementation of the adverse modification provision of section 7. In many cases, impacts associated with the jeopardy standard remain unaffected by the designation of critical habitat and thus would not normally be considered an effect of a critical habitat rulemaking. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of this analysis.

This analysis estimates that, over 10 years, 10 formal consultations and 22 informal consultations will occur on projects with the potential to affect the proposed critical habitat area. As mentioned, most of the future section 7 consultations associated with the area proposed as critical habitat are likely to address private landowner HCPs and participation in Partners for Fish and Wildlife. In addition, the Service expects to provide technical assistance to parties on 431 occasions.

The economic impact associated with section 7 consultations for the invertebrates is anticipated to be approximately $33.4 million over the next 10 years, $23.4 million when

discounted to present value using a rate of 7 percent. Approximately 87 percent of these total costs are expected to result specifically from designation of critical habitat while the remainder are coextensive with the listing of these species. While a range of activities may be affected by designation of critical habitat for the species, approximately 85 percent of the total designation costs are expected to stem from private landowner Habitat Conservation Plans (HCPs) intended to mitigate impacts from development of private lands within critical habitat. HCP impacts result from administrative costs associated with the section 7 consultation process and related project modifications. Remaining costs are expected to stem from review of management plans (*e.g.*, within Government Canyon State Natural Area and Camp Bullis), review of Clean Water Act permits, and participation in Partners for Fish and Wildlife projects on private lands.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Austin Ecological Services Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the Executive Order, we provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this final critical habitat designation for seven Bexar County invertebrates will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this critical habitat designation potentially affects a ''substantial number'' of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses likely to experience a ''significant effect.'' SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, the economic analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA, including *Mid-Tex Electric Co-op., Inc.* v. *F.E.R.C.,* 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.,* 175 F.3d 1027 (D.C. Cir. 1999).

The economic analysis examines the total estimated section 7 costs, including those impacts that may be ''attributable coextensively'' with the listing of the species. This results in a conservative estimate (*i.e.*, more likely to overstate impacts than understate them), because it utilizes the upper bound impact estimate.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate.

The economic analysis identifies land use activities within our proposed critical habitat designation for the seven invertebrate species that are expected to be affected by section 7 of the Act. The following land use activities were identified as being potentially impacted by section 7 (*i.e.*, requiring consultations or associated project modifications) under the ''with section 7'' scenario: Private residential and commercial development; issuance of National Pollution Discharge Elimination System permits by Texas Natural Resource Conservation Commission (TNRCC); development of Karst Management Plan for Camp Bullis; roadway expansions by Texas DOT; Campus expansion of UTSA; and Partners for Fish and Wildlife conservation projects on private lands.

Of the projects that are potentially affected by section 7 consultation for the invertebrates, Camp Bullis occurs exclusively on Federal lands and does not have third party/small entity involvement (*i.e.*, only the Federal action agency and the Service are expected to be involved). In addition, under Small Business Administration (SBA) guidelines, State governments are considered independent sovereigns, not small governments. As such, TNRCC,

Texas DOT, and UTSA are not considered ''small entities.''

Of the projects potentially impacted by section 7, some do not involve any project modifications. Specifically, Partners for Fish and Wildlife conservation projects on private lands are not expected to involve any project modifications. The greatest share of the costs associated with the section 7 consultation process stem from project modifications, as compared to the consultation itself. Indeed, costs associated with the consultation itself are relatively minor, with third-party costs estimated to range from $1,200 to $6,900 per consultation. Therefore, Partners for Fish and Wildlife conservation projects are unlikely to be significantly affected by consultations because these do not involve costly project modifications.

Several developers were identified as having activities with a Federal nexus and therefore are potentially affected by section 7 implementation for the nine invertebrates for which we proposed critical habitat designation. Six landowners are expected to complete HCPs for single- or multi-family homes or commercial development on their lands. These developers would each bear costs associated with the consultation and any related project modification for the HCP.

The SBA defines small development businesses as having less than $28.5 million in average annual receipts (also referred to as sales or revenues). The following steps were taken as part of the economic analysis to estimate number of small businesses affected: Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations); calculate the percent of businesses in the affected industry that are likely to be small; calculate the number of affected small businesses in the affected industry; calculate the percent of small businesses likely to be affected by critical habitat. Using these steps, the economic assessment done for the Bexar County Invertebrate Species Critical Habitat designation indicates that a total annual percentage of about 1 percent of small businesses would bear a significant cost in industry.

In summary, of the projects potentially impacted by section 7 implementation, some are excluded from consideration because they are on Federal or State lands, and some do not involve any project modifications. Specifically, Partners for Fish and Wildlife conservation projects on private lands are not expected to involve any project modifications. The greatest share of the costs associated with the consultation process stem from project modifications (as opposed to the consultation itself). Indeed, costs associated with the consultation itself are relatively minor, with third-party costs estimated to range from $1,200 to $6,900 per consultation. Therefore, small entities are unlikely to be significantly affected by consultations as these consultations do not involve costly project modifications. Additionally, because the costs associated with designating critical habitat for the seven invertebrates are likely to be significant for an total percentage of about one small business per year in the affected industries in the study area, this analysis concludes that a significant economic impact on a significant number of small entities will *not* result from the designation of critical habitat for the nine invertebrates. This would be true even if all of the effects of section 7 consultation on these activities were attributed solely to the critical habitat designation.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use since the majority of the lands being designated as critical habitat occur on privately owned lands that are primarily developed for agricultural and residential uses, and not for energy production or distribution. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the economic analysis, we determine that this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9 of the Act.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights,'' March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for the seven karst invertebrates. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the Austin Ecological Services Field Office (*see* **ADDRESSES** section).

On the basis of the above assessment, we find that this final rule designating critical habitat for the seven karst invertebrates does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the seven endangered karst invertebrates would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this designation does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning.

Civil Justice Reform

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard coordinates that are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983 (NAD 83), and identifies the primary constituent elements within the designated areas to assist the public in understanding the

habitat needs of the seven karst invertebrates.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. Information collections associated with Endangered Species permits are covered by an existing OMB approval, which is assigned control number 1018–0094 and which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designation of critical habitat for the seven karst invertebrates does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available, upon request, from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES** section).

Author

This rule was prepared by the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as set forth below:

■ a. By revising the entries for Beetle, Helotes mold; Beetle [no common name] (*Rhadine exilis*); and Beetle [no common name] (*Rhadine infernalis*) under ''INSECTS'' to read as follows;

■ b. By removing the entries for Harvestman, Robber Baron Cave; Spider, Government Canyon Cave; Spider, Madla's Cave; Spider [no common name] (Cicurina venii); Spider, Robber Baron Cave; and Spider, vesper cave; and

■ c. By adding entries for Harvestman, Cokendolpher cave; Meshweaver, Braken Bat Cave; Meshweaver, Government Canyon Bat Cave; Meshweaver, Madla Cave; Meshweaver, Robber Baron Cave; and Spider, Government Canyon Bat Cave under ''ARACHNIDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
INSECTS							
*	*	*	*	*	*	*	*
Beetle, Helotes mold	*Batrisodes venyivi*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
*	*	*	*	*	*	*	*
Beetle, [no common name].	*Rhadine exilis*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
Beetle, [no common name].	*Rhadine infernalis*	U.S.A. (TX)	NA	E	706	17.95(i)	NA
*	*	*	*	*	*	*	*
ARACHNIDS							
*	*	*	*	*	*	*	*
Harvestman, Cokendolpher cave.	*Texella cokendolpheri*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
Meshweaver, Braken Bat Cave.	*Circurina venii*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
Meshweaver, Government Canyon Bat Cave.	*Circurina vespera*	U.S.A. (TX)	NA	E	706	NA	NA
Meshweaver, Madla Cave.	*Cicurina madla*	U.S.A. (TX)	NA	E	706	17.95(g)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Meshweaver, Robber Baron Cave.	*Cicurina baronia*	U.S.A. (TX)	NA	E	706	17.95(g)	NA
*	*	*	*	*	*	*	
Spider, Government Canyon Bat Cave.	*Neoleptoneta microps*	U.S.A. (TX)	NA	E	706	NA	NA
*	*	*	*	*	*	*	

■ 3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

■ a. In paragraph (g), critical habitat for the Cokendolpher cave harvestman (*Texella cokendolpheri*);

■ b. In paragraph (g), critical habitat for the Braken Bat Cave meshweaver (*Cicurina venii*);

■ c. In paragraph (g), critical habitat for the Madla Cave meshweaver (*Cicurina madla*);

■ d. In paragraph (g), critical habitat for the Robber Baron Cave meshweaver (*Cicurina baronia*);

■ e. In paragraph (i), critical habitat for the Helotes mold beetle (*Batrisodes venyivi*).

■ f. In paragraph (i), critical habitat for the beetle (no common name) (*Rhadine exilis*); and

■ g. In paragraph (i), critical habitat for the beetle (no common name), (*Rhadine infernalis*).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

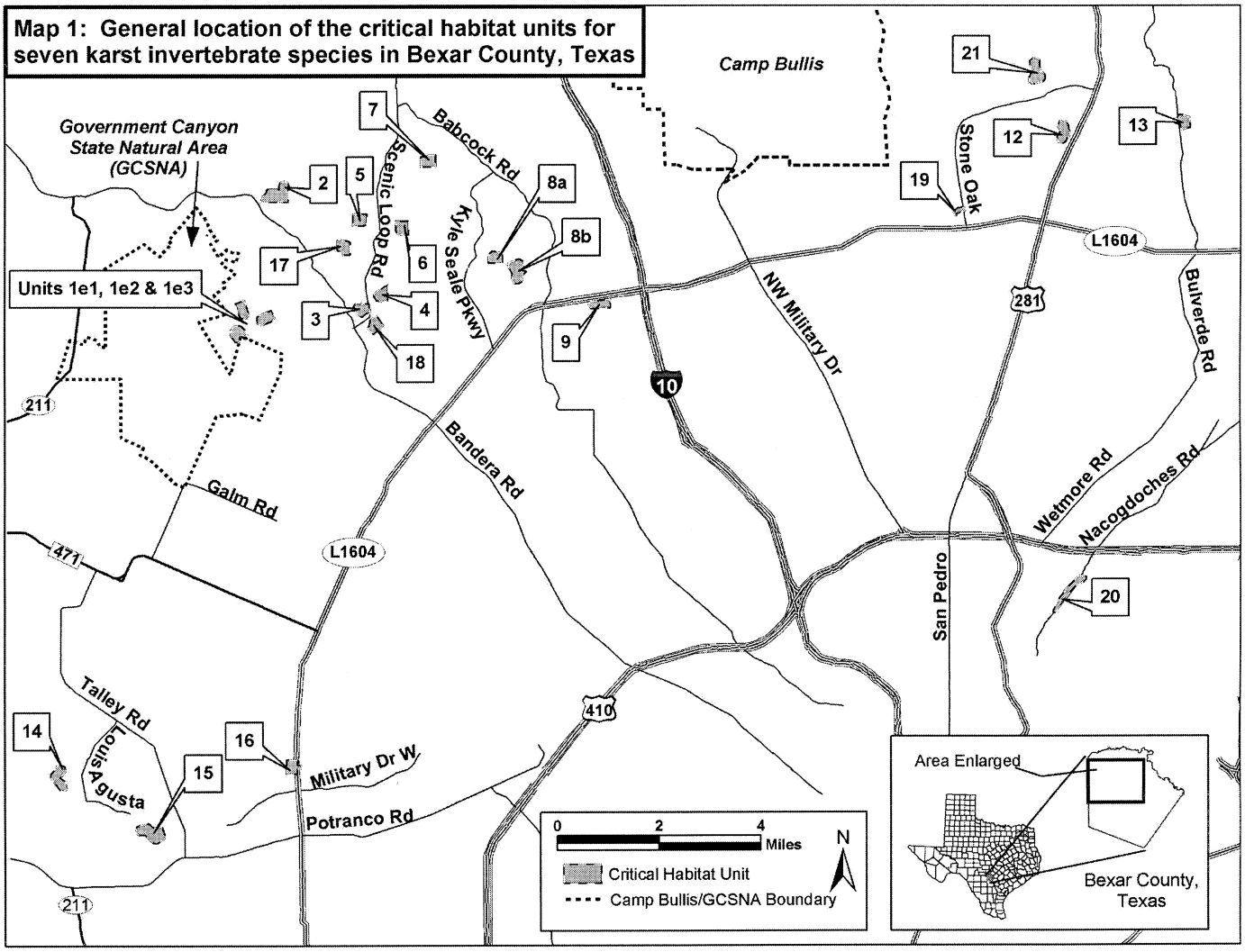
(g) *Arachnids.*

Cokendolpher cave harvestman (*Texella cokendolpheri*)

(1) Critical habitat for the Cokendolpher cave harvestman occurs in Unit 20 as described below and depicted on Map 1 (index map) and Map 2 below. All coordinates are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983. Coordinates were derived from 2001 digital orthophotographs.

(2) Map 1—Index map of critical habitat units for karst invertebrate species in Bexar County, Texas—follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(3) The primary constituent elements include:

(i) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and

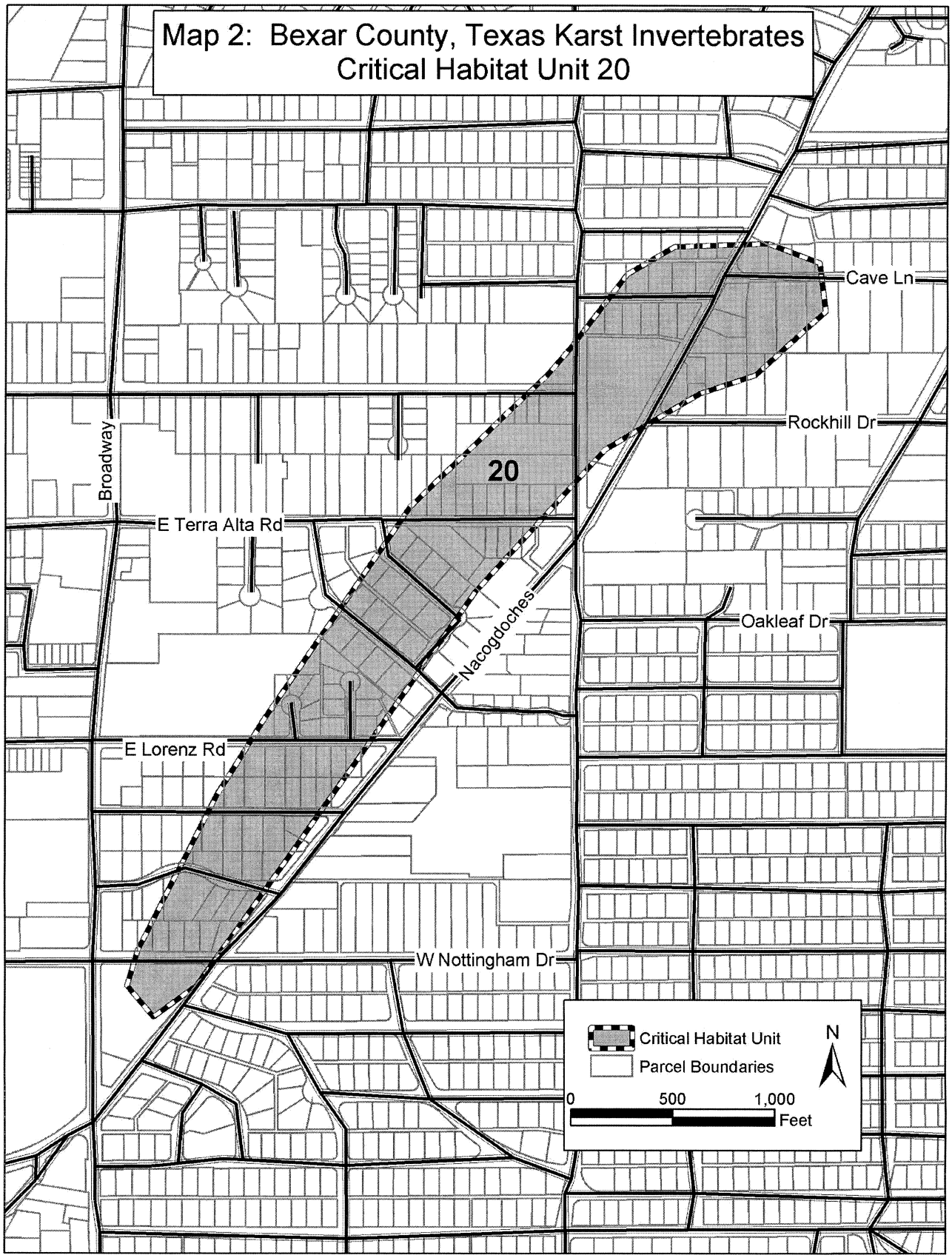
(ii) The biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

(4) Existing human-constructed, above-ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures also are not considered critical habitat.

(5) Unit 20 (23 ha (57 ac)) is an area bounded by points with the following coordinates: –98.4582897, 29.5087489; –98.4575517, 29.5091199; –98.4561171, 29.5091615; –98.4553228, 29.5088978; –98.4552343, 29.5082394; –98.4563160, 29.5073726; –98.4571671, 29.5071204; –98.4586325, 29.5063688; –98.4606616, 29.5044311; –98.4637341, 29.5006275; –98.4649997, 29.4990919; –98.4656642, 29.4986719; –98.4660631, 29.4991019; –98.4658881, 29.4995898; –98.4646589, 29.5017013; –98.4639396, 29.5027162; –98.4616730, 29.5055952; –98.4595256, 29.5073856; –98.4591719, 29.5077488; –98.4582897, 29.5087489.

(6) Map 2—Unit 20 follows:

BILLING CODE 4310–55–P



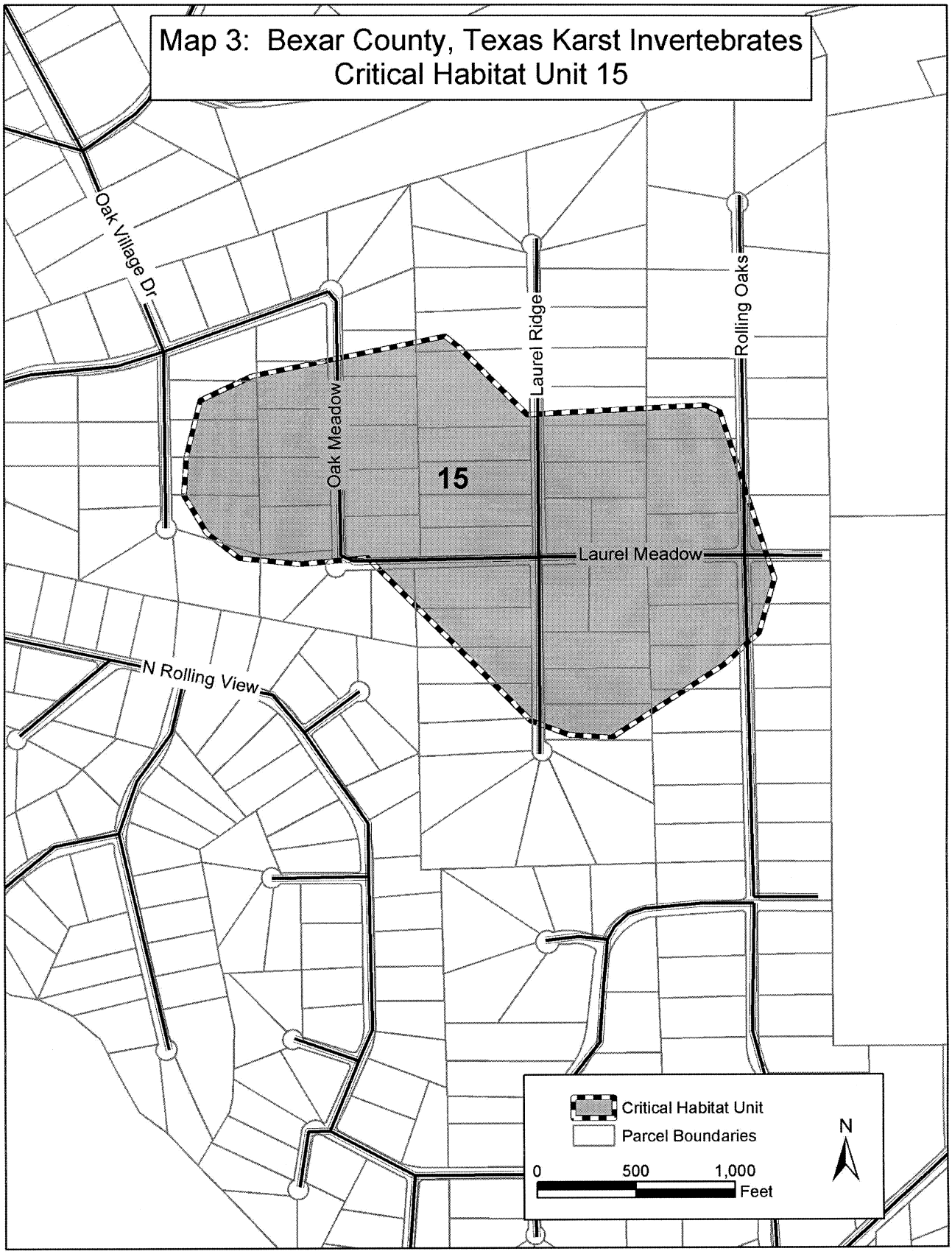
Braken Bat Cave meshweaver (*Cicurina venii*)

(1) Critical habitat for the Braken Bat Cave meshweaver in Bexar County, Texas, occurs in Unit 15 as described below and depicted on Map 3 below.

Unit 15 also is depicted on Map 1 (index map) provided in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

(2) Unit 15 (34 ha (85 ac)) is an area bounded by points with the following coordinates: –98.7631005, 29.4388531; –98.7600316, 29.4394009; –98.7598094, 29.4392533; –98.7587180, 29.4382984; –98.7558932, 29.4384257; –98.7556537, 29.4383265; –98.7547983, 29.4359982; –98.7550418, 29.4352415; –98.7555963, 29.4347910; –98.7573878, 29.4337784; –98.7580646, 29.4338220; –98.7586605, 29.4340159; –98.7612682, 29.4363049; –98.7623440, 29.4362183; –98.7633120, 29.4363085; –98.7638206, 29.4366668; –98.7641806, 29.4371861; –98.7641397, 29.4377268; –98.7639175, 29.4385170; –98.7631005, 29.4388531.

(3) Map 3—Unit 15 follows:



Madla Cave meshweaver (*Cicurina madla*)

(1) Critical habitat for the Madla Cave meshweaver in Bexar County, Texas, occurs in Units 2, 3, 5, 8b, and 17 as described below and depicted on Maps

4 through 7 below. These units also are depicted on Map 1 (index map) provided in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

(2) Four caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b); and Madla Cave and the surrounding 2 ha (5 ac) (within Unit 17).

(3) Unit 2 (37 ha (92 ac)) is an area bounded by points with the following coordinates: –98.7233687, 29.6171088; –98.7232109, 29.6176729; –98.7226506, 29.6187073; –98.7223227, 29.6191855; –98.7219946, 29.6195016; –98.7215653, 29.6198980; –98.7214108, 29.6206847; –98.7175298, 29.6206847; –98.7174011, 29.6219810; –98.7170539, 29.6225993; –98.7162170, 29.6229506; –98.7153881, 29.6229101; –98.7147133, 29.6225995; –98.7143375, 29.6220053; –98.7142667, 29.6214953; –98.7144462, 29.6206782; –98.7144750, 29.6170924; –98.7145361, 29.6170162; –98.7165027, 29.6170258; –98.7163850, 29.6174867; –98.7177246, 29.6172351; –98.7177252, 29.6170317; –98.7211420, 29.6170764; –98.7233687, 29.6171088.

(4) Map 4—Unit 2 follows:

(5) Unit 3 (17 ha (41 ac)) is an area bounded by points with the following coordinates: –98.6924522, 29.5880654; –98.6884953, 29.5878232; –98.6883750, 29.5869448; –98.6879295, 29.5850798; –98.6894469, 29.5850833; –98.6906186,

29.5841182; –98.6929315, 29.5855036; –98.6936461, 29.5865268; –98.6931713, 29.5875652; –98.6924522, 29.5880654.

(6) Map 5—Unit 3 follows:

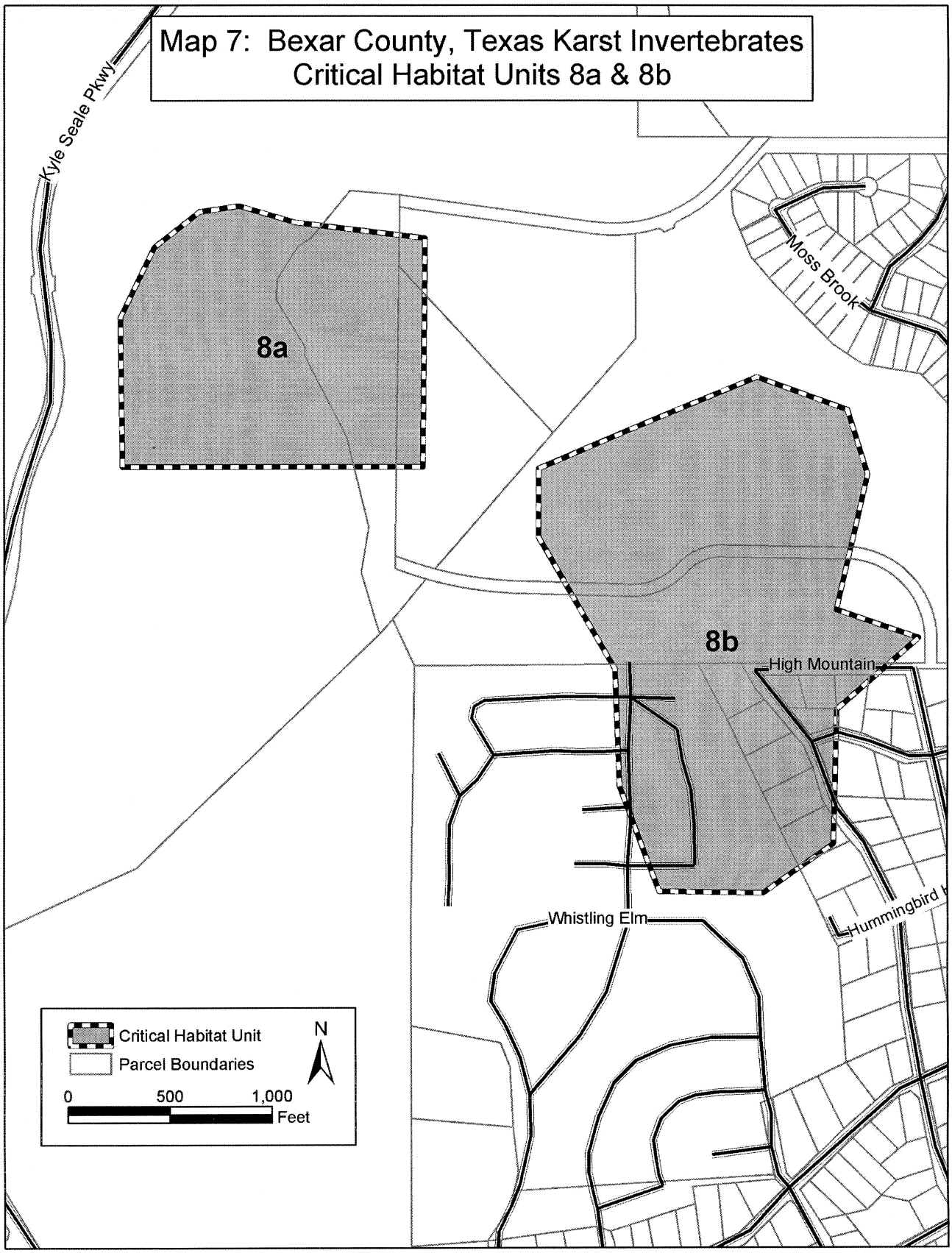
(7) Unit 5 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6935478, 29.6136095; –98.6890212, 29.6135990; –98.6890205, 29.6111931; –98.6891305, 29.6109546; –98.6896239, 29.6104067; –98.6903350, 29.6101696; –98.6935582, 29.6101663; –98.6935478, 29.6136095.

(8) Map 6—Unit 5 (which also depicts Unit 17) follows:

(9) Unit 8b (28 ha (69 ac)) is an area bounded by points with the following coordinates: –98.6429582, 29.5992695; –98.6395799, 29.6005152; –98.6381868, 29.6000556; –98.6378758, 29.5991778; –98.6383595, 29.5973398; –98.6370868,

29.5969511; –98.6383585, 29.5959854; –98.6384179, 29.5941526; –98.6395017, 29.5934820; –98.6411044, 29.5935108; –98.6417193, 29.5949384; –98.6417849, 29.5965421; –98.6429721, 29.5983417; –98.6429582, 29.5992695.

(10) Map 7—Unit 8b (which also depicts Unit 8a) follows:



(11) Unit 17 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6986633, 29.6061189; –98.6978901, 29.6064178; –98.6968967, 29.6060042; –98.6955470, 29.6059909; –98.6944214, 29.6056088; –98.6944325,

29.6018959; –98.6967798, 29.6018910; –98.6967762, 29.6031320; –98.6986774, 29.6031773; –98.6986633, 29.6061189.

(12) For a map of unit 17, refer to Map 6—Unit 5 in paragraph (8) of this entry.

Robber Baron Cave meshweaver (*Cicurina baronia*)

(1) Critical habitat for the Robber Baron Cave meshweaver in Bexar County, Texas, occurs in Unit 20 as provided in the critical habitat unit description and depicted on Map 1 and Map 2 in the entry for Cokendolpher cave harvestman in this paragraph (g). The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Cokendolpher cave harvestman in this paragraph (g), are identical for this species.

* * * * *

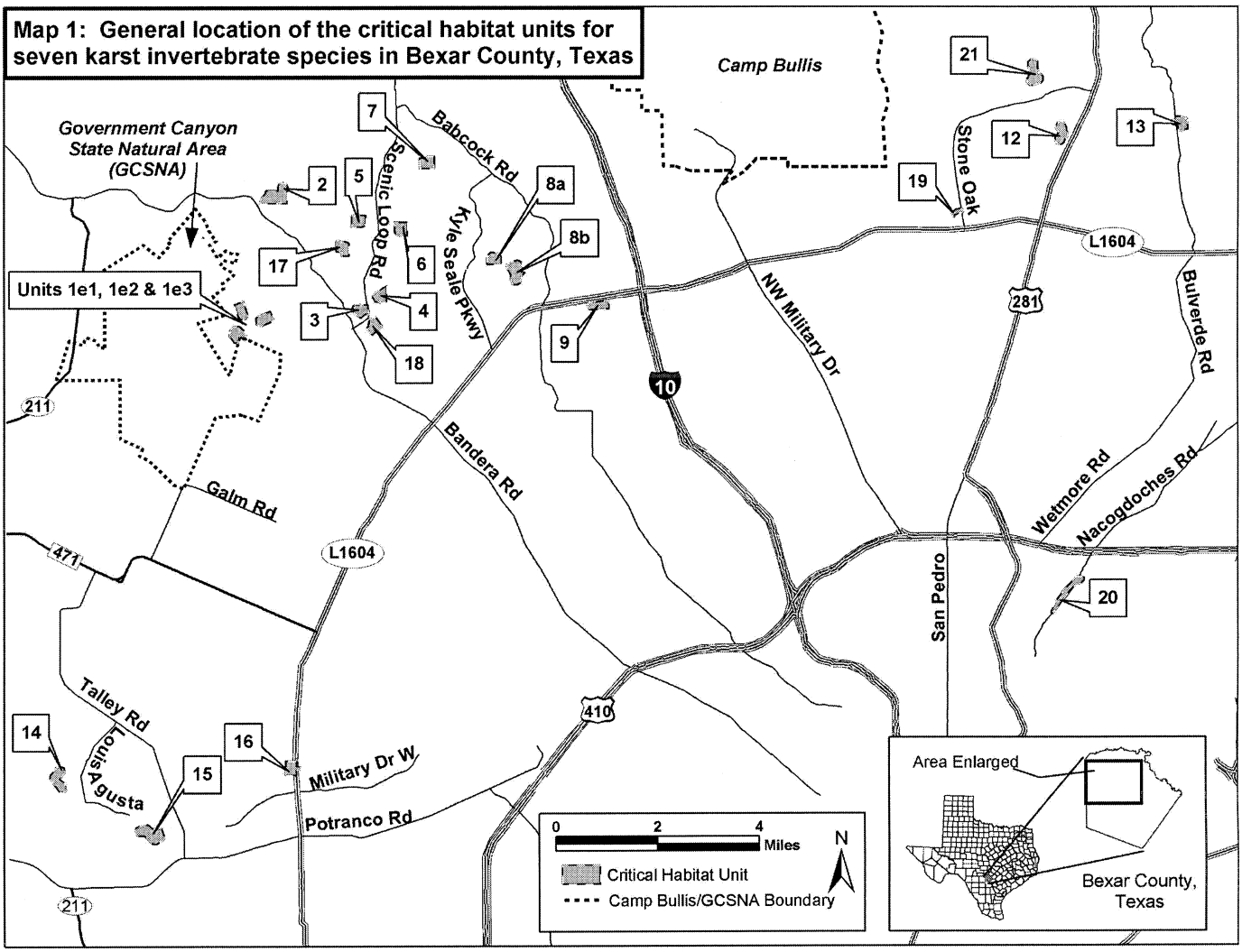
(i) *Insects.*

* * * * *

Helotes mold beetle (*Batrisodes venyivi*)

(1) Critical habitat for the Helotes mold beetle occurs in Units 1e1, 3, and 5 as described below and depicted on Map 1 (index map) and Maps 2 through 4 below. All coordinates are geographic longitude and latitude, decimal degree coordinate pairs, referenced to North American Horizontal Datum 1983. Coordinates were derived from 2001 digital orthophotographs.

(2) Map 1—Index map of critical habitat units for karst invertebrate species in Bexar County, Texas—follows:



(3) The primary constituent elements include:

(i) The physical features of karst-forming rock containing subterranean spaces with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks suitable for foraging and sheltering); and

(ii) The biological features of a healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) surrounding the karst feature that provide nutrient input and buffer the karst ecosystem from adverse effects (from, for example, nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

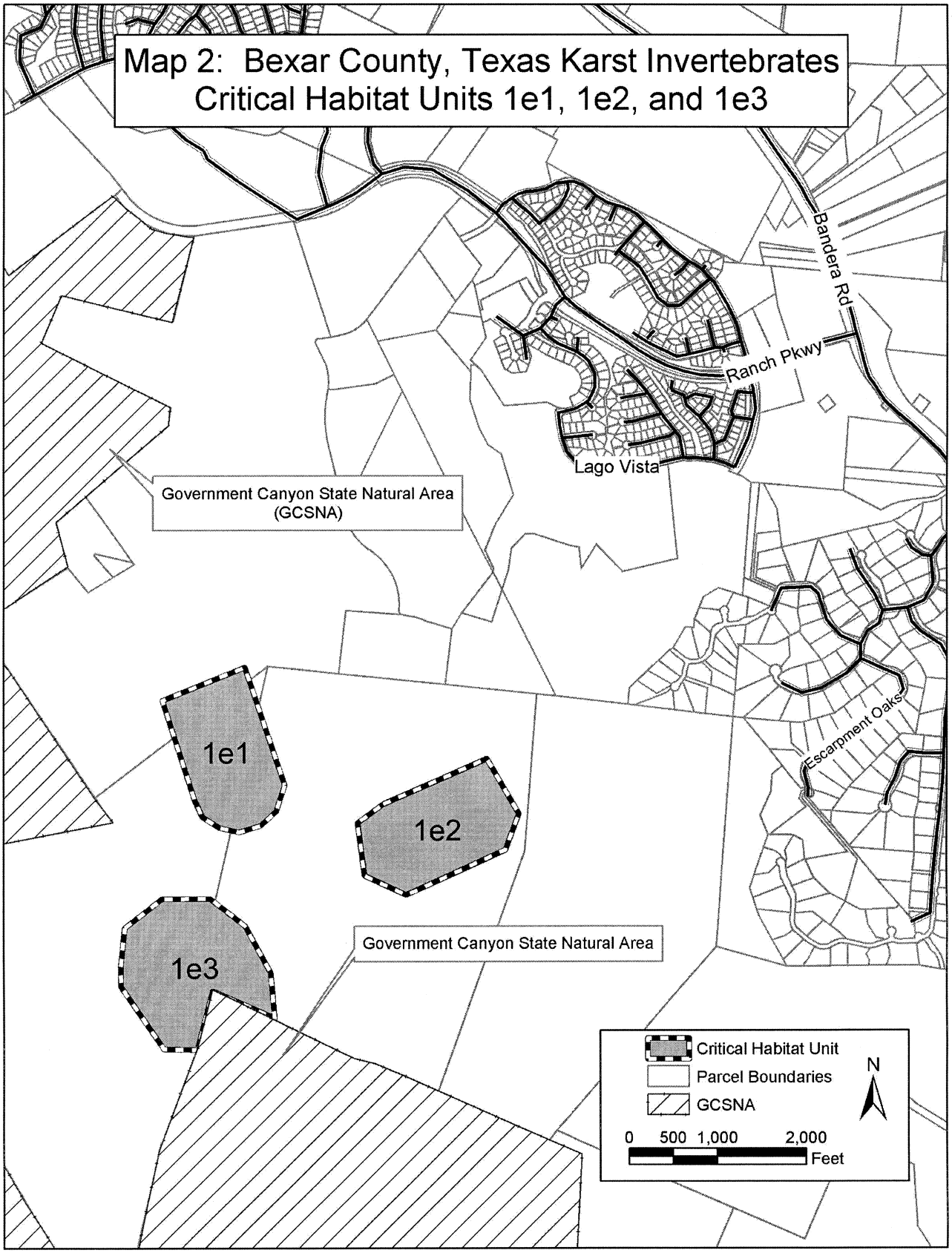
(4) Existing human-constructed, above ground, impervious structures do not contain the primary constituent elements and are not considered to be critical habitat. Such features and structures include, but are not limited to, buildings and paved roads. However, subsurface areas under these structures

are considered to be critical habitat since subterranean spaces containing these species and/or transmitting moisture and nutrients through the karst ecosystem extend, in some cases, underneath these existing human-constructed structures. Landscaped areas associated with existing human-constructed structures are also not considered critical habitat.

(5) Two caves, Helotes Blowhole and Helotes Hilltop caves, and their associated approximately 10 ha (25 ac) karst management area established under the La Cantera section 10 permit, are within the boundaries of Unit 3 but are not designated as critical habitat.

(6) Unit 1e1 (15 ha (38 ac)) is an area bounded by points with the following coordinates: –98.7273522, 29.5853221; –98.7276682, 29.5844887; –98.7282285, 29.5840393; –98.7289978, 29.5838347; –98.7296876, 29.5839736; –98.7302983, 29.5843184; –98.7305603, 29.5848409; –98.7317069, 29.5879827; –98.7287776, 29.5890153; –98.7285230, 29.5883695; –98.7273522, 29.5853221.

(7) Map 2—Unit 1e1 (which also depicts Units 1e2 and 1e3) follows:



(8) Unit 3 (17 ha (41 ac)) is an area bounded by points with the following coordinates: –98.6924522, 29.5880654; –98.6884953, 29.5878232; –98.6883750, 29.5869448; –98.6879295, 29.5850798; –98.6894469, 29.5850833; –98.6906186,

29.5841182; –98.6929315, 29.5855036; –98.6936461, 29.5865268; –98.6931713, 29.5875652; –98.6924522, 29.5880654.

(9) Map 3—Unit 3 (which also depicts Units 4 and 18) follows:

(10) Unit 5 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6935478, 29.6136095; –98.6890212, 29.6135990; –98.6890205, 29.6111931; –98.6891305, 29.6109546; –98.6896239, 29.6104067; –98.6903350,

29.6101696; –98.6935582, 29.6101663; –98.6935478, 29.6136095.

(11) Map 4—Unit 5 (which also depicts Unit 17) follows:

BILLING CODE 4310–55–C

Beetle (no common name) (*Rhadine exilis*)

(1) Critical habitat for the beetle *Rhadine exilis* in Bexar County, Texas, occurs in Units 1e1, 3, and 5 as provided in the critical habitat unit descriptions and depicted on Maps 1 through 4 in the entry for Helotes mold beetle in this paragraph (i). Critical habitat for this species also occurs in Units 1e3 and 4 as described below and depicted on Maps 2 and 3 in the entry for Helotes mold beetle in this paragraph (i). In addition, critical habitat for this species occurs in Units 2, 6, 7, 8a, 8b, 9, 12, 13, and 21 as described below and depicted on Maps 5 through 12 below. The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Helotes mold beetle in this paragraph (i), are identical for this species.

(2) Four caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); and Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b).

(3) Unit 1e3 (19 ha (46 ac)) is an area bounded by points with the following coordinates: –98.7330644, 29.5808303; –98.7317429, 29.5817323; –98.7300245, 29.5817484; –98.7287834, 29.5808858; –98.7278797, 29.5794152; –98.7277522, 29.5779929; –98.7299554, 29.5788393; –98.7305067, 29.5770049; –98.7316838, 29.5770266; –98.7331986, 29.5789722; –98.7332119, 29.5796238; –98.7330644, 29.5808303.

(4) A map of Unit 1e3 is provided in Map 2 of the entry for Helotes mold beetle in this paragraph (i).

(5) Unit 2 (37 ha (92 ac)) is an area bounded by points with the following coordinates: –98.7233687, 29.6171088; –98.7232109, 29.6176729; –98.7226506, 29.6187073; –98.7223227, 29.6191855; –98.7219946, 29.6195016; –98.7215653, 29.6198980; –98.7214108, 29.6206847; –98.7175298, 29.6206847; –98.7174011, 29.6219810; –98.7170539, 29.6225993; –98.7162170, 29.6229506; –98.7153881, 29.6229101; –98.7147133, 29.6225995; –98.7143375, 29.6220053; –98.7142667, 29.6214953; –98.7144462, 29.6206782; –98.7144750, 29.6170924; –98.7145361, 29.6170162; –98.7165027, 29.6170258; –98.7163850, 29.6174867; –98.7177246, 29.6172351; –98.7177252, 29.6170317; –98.7211420, 29.6170764; –98.7233687, 29.6171088.

(6) Map 5—Unit 2 follows:

BILLING CODE 4310–55–P

(7) Unit 4 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6867019, 29.5907363; –98.6858306, 29.5913949; –98.6821967, 29.5933020; –98.6821915, 29.5888925; –98.6838368, 29.5884340; –98.6861597,

29.5888524; –98.6867424, 29.5898281; –98.6867019, 29.5907363.

(8) A map of Unit 4 is provided in Map 3 of the entry for Helotes mold beetle in this paragraph (i).

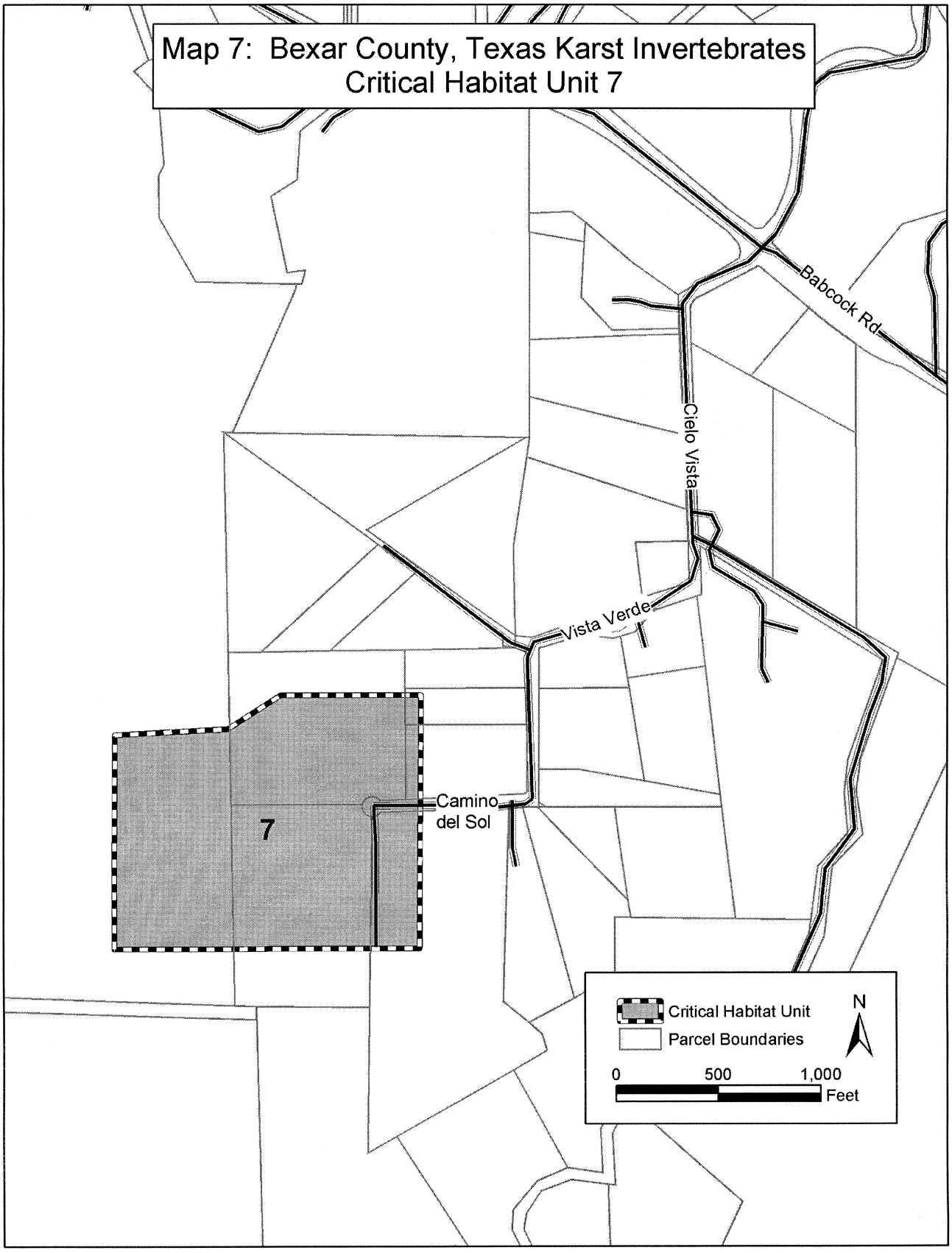
(9) Unit 6 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6754738, 29.6114940; –98.6754991, 29.6076989; –98.6783407, 29.6077443; –98.6790700, 29.6080113; –98.6795845, 29.6087581; –98.6796498, 29.6115041; –98.6754738, 29.6114940.

(10) Map 6—Unit 6 follows:

(11) Unit 7 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6713696, 29.6269338; –98.6713466, 29.6298459; –98.6696115, 29.6299251; –98.6688040, 29.6303752;

–98.6666183, 29.6303712; –98.6666569, 29.6269341; –98.6713696, 29.6269338.

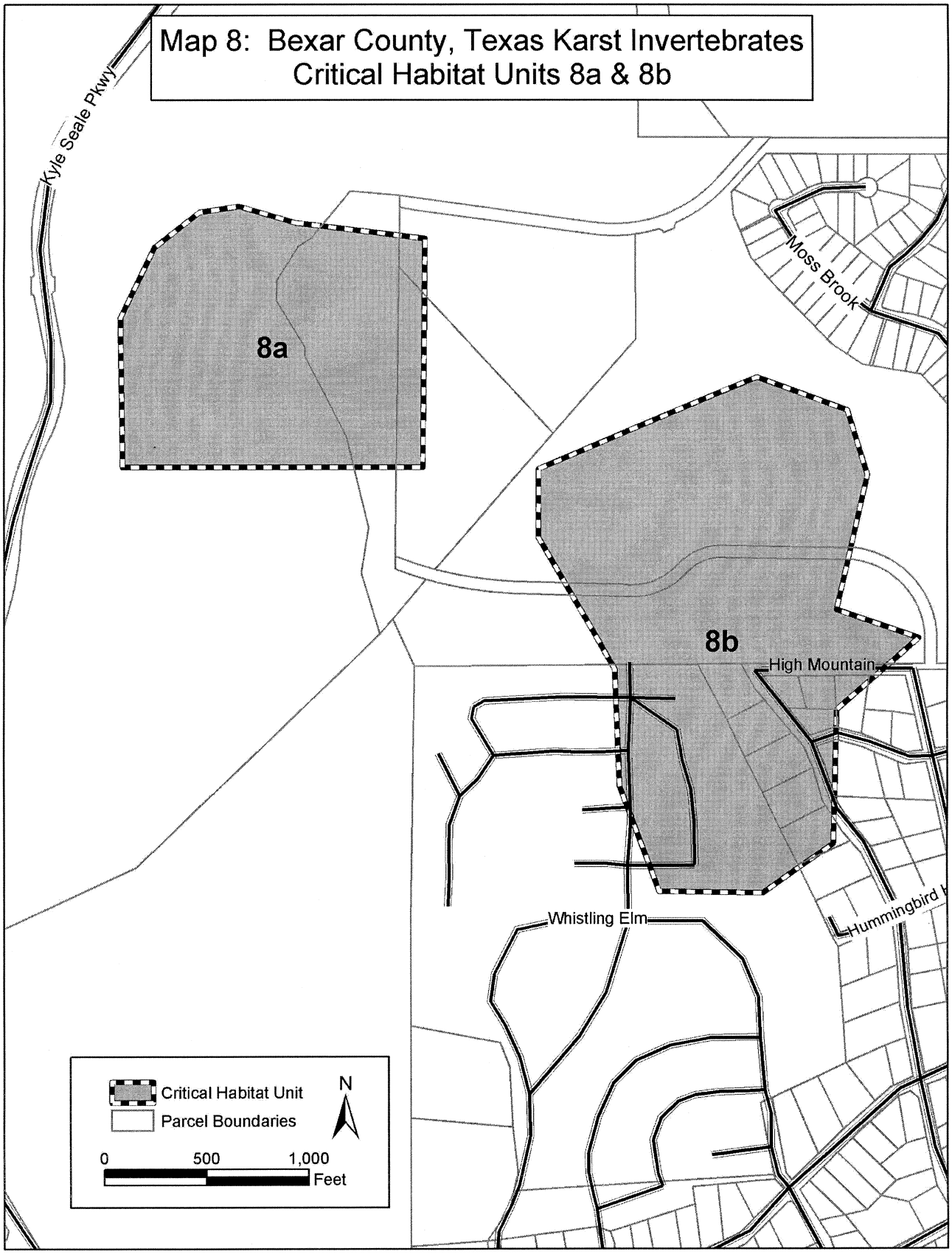
(12) Map 7—Unit 7 follows:



(13) Unit 8a (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6467402, 29.6026321; –98.6447253, 29.6024097; –98.6447648, 29.5992959; –98.6494110, 29.5993090; –98.6494384, 29.6013452; –98.6489127, 29.6023010; –98.6482203, 29.6027779; –98.6476087, 29.6028598; –98.6467402, 29.6026321.

(14) Unit 8b (28 ha (69 ac)) is an area bounded by points with the following coordinates: –98.6429582, 29.5992695; –98.6395799, 29.6005152; –98.6381868, 29.6000556; –98.6378758, 29.5991778; –98.6383595, 29.5973398; –98.6370868, 29.5969511; –98.6383585, 29.5959854; –98.6384179, 29.5941526; –98.6395017, 29.5934820; –98.6411044, 29.5935108; –98.6417193, 29.5949384; –98.6417849, 29.5965421; –98.6429721, 29.5983417; –98.6429582, 29.5992695.

(15) Map 8—Units 8a and 8b follows:



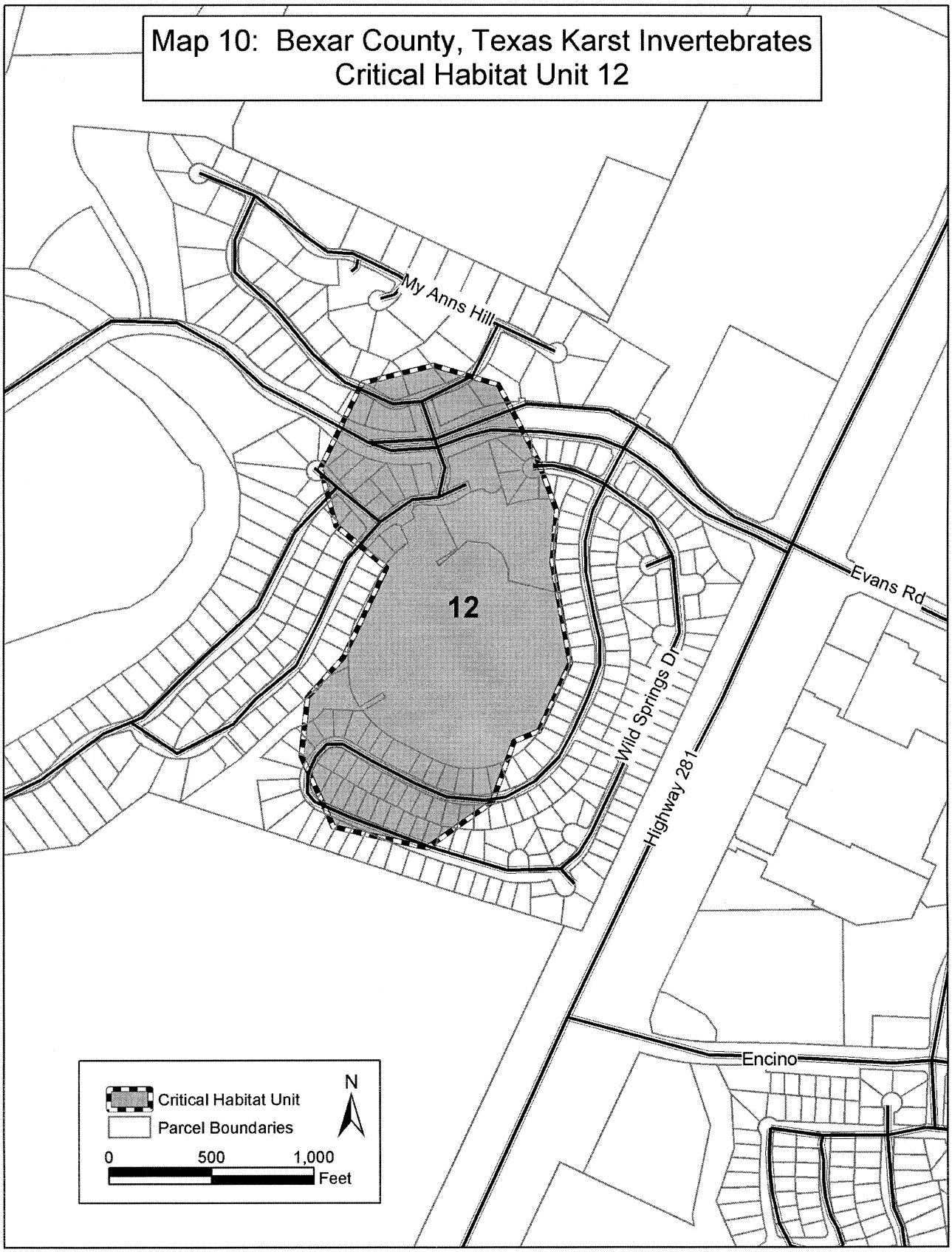
(16) Unit 9 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.6166421, 29.5881679; –98.6097995, 29.5889549; –98.6094772, 29.5865751; –98.6141408, 29.5862370;

–98.6158210, 29.5862418; –98.6165749, 29.5871541; –98.6166421, 29.5881679.

(17) Map 9—Unit 9 follows:

(18) Unit 12 (21 ha (51 ac)) is an area bounded by points with the following coordinates: –98.4631439, 29.6393535; –98.4620337, 29.6395912; –98.4610270, 29.6393230; –98.4604275, 29.6383078; –98.4601340, 29.6376003; –98.4602053, 29.6369053; –98.4599272, 29.6355399; –98.4604201, 29.6346170; –98.4608048, 29.6344781; –98.4611518, 29.6336481; –98.4621637, 29.6330425; –98.4636173, 29.6333332; –98.4641049, 29.6342973; –98.4640055, 29.6350951; –98.4634444, 29.6356360; –98.4627791, 29.6368420; –98.4635574, 29.6374176; –98.4637899, 29.6381796; –98.4637898, 29.6382043; –98.4631439, 29.6393535.

(19) Map 10—Unit 12 follows:



(20) Unit 13 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.4218888, 29.6404393; –98.4212080, 29.6405040; –98.4208242, 29.6372953; –98.4239377, 29.6367357; –98.4241724, 29.6382709; –98.4250182,

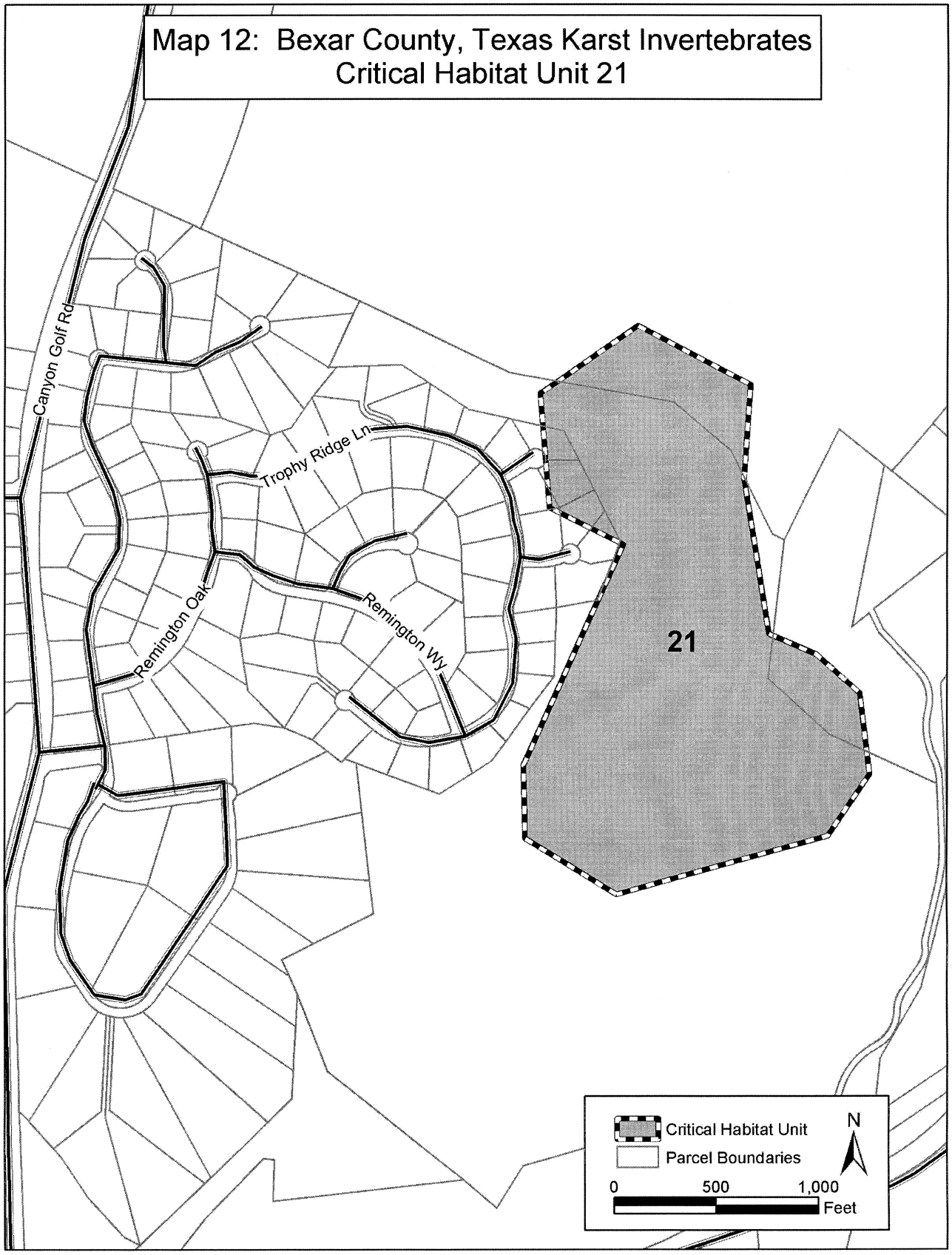
29.6383670; –98.4255670, 29.6386096; –98.4260182, 29.6390832; –98.4257350, 29.6392361; –98.4260492, 29.6397945; –98.4250314, 29.6403527; –98.4246243, 29.6411168; –98.4229768, 29.6409069; –98.4218888, 29.6404393.

(21) Map 11—Unit 13 follows:

(22) Unit 21 (27 ha (68 ac)) is an area bounded by points with the following coordinates: –98.4716469, 29.6499842; –98.4730641, 29.6507507; –98.4730857, 29.6517491; –98.4715209, 29.6547384; –98.4726672, 29.6552447; –98.4728036,

29.6567962; –98.4712860, 29.6577112; –98.4695532, 29.6569100; –98.4696535, 29.6556282; –98.4692815, 29.6535131; –98.4685518, 29.6532365; –98.4678845, 29.6527093; –98.4677417, 29.6516106; –98.4683879, 29.6507722; –98.4716469, 29.6499842.

(23) Map 12—Unit 21 follows:



BILLING CODE 4310–55–C

Beetle (no common name) (*Rhadine infernalis*)

(1) Critical habitat for the beetle *Rhadine infernalis* in Bexar County,

Texas, occurs in Units 1e1, 3 and 5 as provided in the critical habitat unit descriptions and depicted on Maps 1 through 4 in the entry for Helotes mold beetle in this paragraph (i). This species also occurs in the following units: Unit 1e2 as described below and depicted on Map 2 in the entry for Helotes mold beetle in this paragraph (i); Units 2, 6, 8a, and 8b as described in the text and depicted on Maps 5, 6, and 8 in the entry for beetle (*Rhadine exilis*) in this paragraph (i); Unit 4 as provided in the critical habitat descriptions for beetle (*Rhadine exilis*) and depicted on Map 3 in the entry for Helotes mold beetle in this paragraph (i); Units 17 and 18 described below and depicted on Maps 3 and 4 found in the entry for Helotes mold beetle in this paragraph (i); and Units 14, 15, 16, and 19 as described below and depicted on Maps 13 through 16 below. The primary constituent elements and statements regarding existing structures and associated landscaping, as described in the entry for Helotes mold beetle in this paragraph (i), are identical for this species.

(2) Five caves and their associated karst management areas established under the La Cantera section 10(a)(1)(B) permit are within the boundaries of units but are not designated as critical habitat designation. These include Helotes Blowhole and Helotes Hilltop caves and the surrounding approximately 10 ha (25 ac) (within Unit 3); John Wagner Ranch Cave No. 3 and the surrounding approximately 1.6 ha (4 ac) (within Unit 6); and Hills and Dales Pit and the surrounding approximately 28 ha (70 ac) (within Unit 8b); and Madla Cave and the surrounding 2 ha (5 ac) (within Unit 17).

(3) Unit 1e2 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.7238284, 29.5847161; –98.7201061, 29.5861352; –98.7189558, 29.5844029; –98.7194474, 29.5832652; –98.7230107, 29.5818492; –98.7245095, 29.5824623; –98.7247550, 29.5841155; –98.7238284, 29.5847161.

(4) A map of unit 1e2 is provided in Map 2 of the entry for Helotes mold beetle in this paragraph (i).

(5) Unit 14 (26 ha (64 ac)) is an area bounded by points with the following coordinates: –98.7863612, 29.4495294; –98.7869725, 29.4489471; –98.7875551, 29.4486522; –98.7883435, 29.4486781; –98.7889905, 29.4489913; –98.7918932, 29.4524710; –98.7918632, 29.4533747; –98.7904052, 29.4548676; –98.7899060, 29.4556966; –98.7887880, 29.4561713; –98.7872743, 29.4556964; –98.7870331, 29.4543351; –98.7888385, 29.4523567; –98.7868531, 29.4511085; –98.7863591, 29.4505317; –98.7863612, 29.4495294.

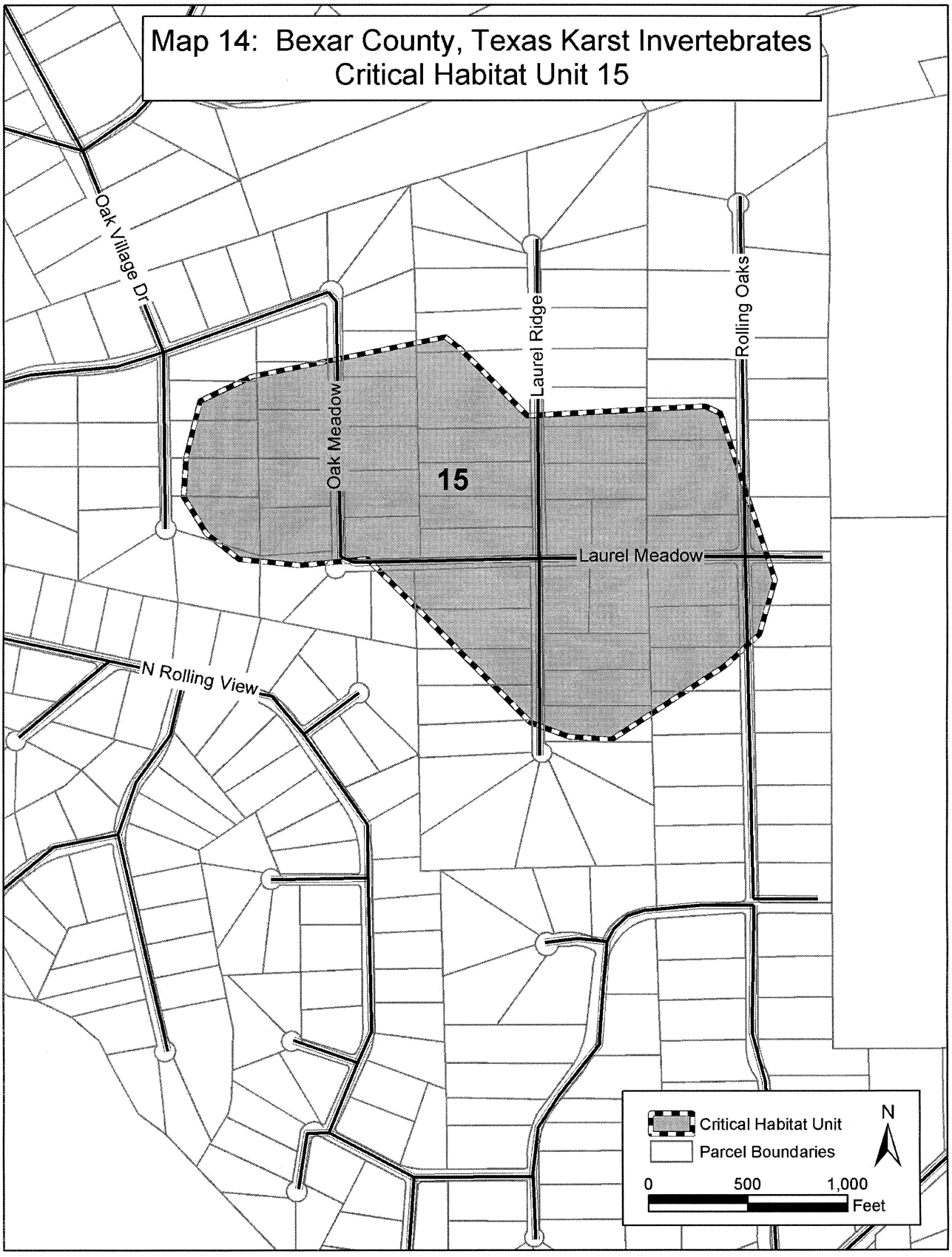
(6) Map 13—Unit 14 follows:

BILLING CODE 4310–55–P

(7) Unit 15 (34 ha (85 ac)) is an area bounded by points with the following coordinates: –98.7631005, 29.4388531; –98.7600316, 29.4394009; –98.7598094, 29.4392533; –98.7587180, 29.4382984; –98.7558932, 29.4384257; –98.7556537,

29.4383265; –98.7547983, 29.4359982; –98.7550418, 29.4352415; –98.7555963, 29.4347910; –98.7573878, 29.4337784; –98.7580646, 29.4338220; –98.7586605, 29.4340159; –98.7612682, 29.4363049; –98.7623440, 29.4362183; –98.7633120, 29.4363085; –98.7638206, 29.4366668; –98.7641806, 29.4371861; –98.7641397, 29.4377268; –98.7639175, 29.4385170; –98.7631005, 29.4388531.

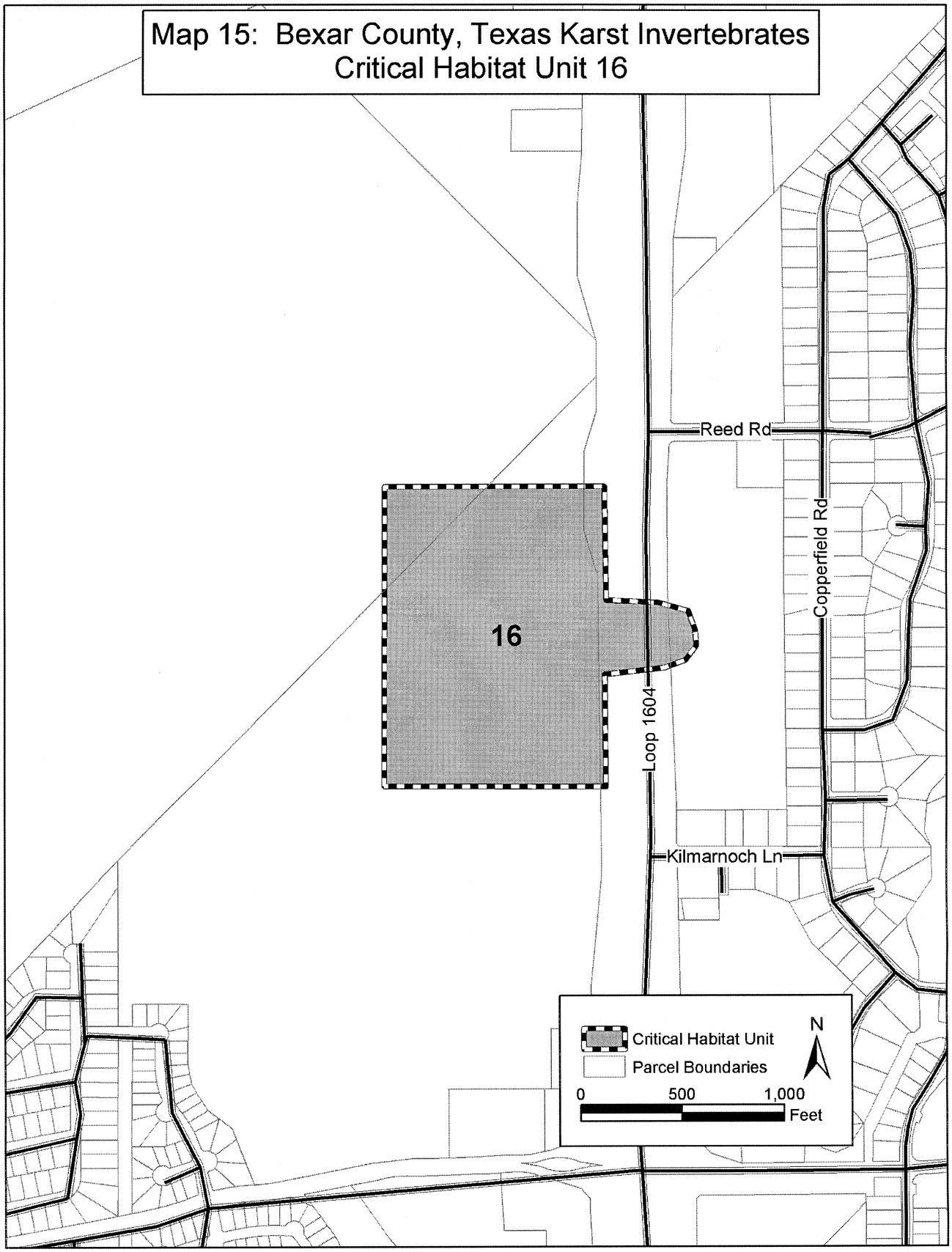
(8) Map 14—Unit 15 follows:



(9) Unit 16 (16 ha (40 ac)) is an area bounded by points with the following coordinates: –98.7154218, 29.4533018; –98.7153995, 29.4573801; –98.7119857, 29.4573751; –98.7119610, 29.4558232; –98.7111540, 29.4557860; –98.7106973,

29.4556731; –98.7105899, 29.4554235; –98.7105693, 29.4552002; –98.7107385, 29.4550044; –98.7110558, 29.4549040; –98.7119873, 29.4548136; –98.7119764, 29.4532848; –98.7154218, 29.4533018.

(10) Map 15—Unit 16 follows:



BILLING CODE 4310–55–C

(11) Unit 17 (16 ha (40 ac)) is an area bounded by points with the following coordinates: —98.6986633, 29.6061189; —98.6978901, 29.6064178;

—98.6968967, 29.6060042;
—98.6955470, 29.6059909;
—98.6944214, 29.6056088;
—98.6944325, 29.6018959;
—98.6967798, 29.6018910;
—98.6967762, 29.6031320;
—98.6986774, 29.6031773;
—98.6986633, 29.6061189.

(12) A map of Unit 17 is provided in Map 4 in the entry for Helotes mold beetle in this paragraph (i).

(13) Unit 18 (16 ha (40 ac)) is an area bounded by points with the following coordinates: —98.6879353, 29.5840278;
—98.6871403, 29.5838597;
—98.6859450, 29.5845069;
—98.6838609, 29.5817508;
—98.6870156, 29.5791593;
—98.6889591, 29.5810380;
—98.6883743, 29.5818521;
—98.6879353, 29.5840278.

(14) A map of Unit 18 is provided in Map 3 in the entry for Helotes mold beetle in this paragraph (i).

(15) Unit 19 (5 ha (12 ac)) is an area bounded by points with the following coordinates: —98.4945129, 29.6147150;
—98.4940750, 29.6145674;
—98.4938755, 29.6141954;
—98.4939880, 29.6138063;
—98.4942787, 29.6135970;
—98.4952809, 29.6135500;
—98.4956056, 29.6133414;
—98.4963069, 29.6130155;
—98.4967699, 29.6130881;
—98.4966492, 29.6123219;
—98.4973783, 29.6125657;
—98.4978516, 29.6131158;
—98.4974600, 29.6135445;
—98.4971077, 29.6136897;
—98.4970745, 29.6140495;
—98.4968571, 29.6142911;
—98.4962556, 29.6145285;
—98.4954870, 29.6146791;
—98.4945129, 29.6147150.

(16) Map 16—Unit 19 follows:

BILLING CODE 4310–55–P


Map 16: Bexar County, Texas Karst Invertebrates
Critical Habitat Unit 19
Contadora
Sonterra Blvd
19
Stone Oak Pkwy
Sonterra Place
Loop 1604
Critical Habitat Unit
Parcel Boundaries
N
0
500
1,000
Feet

BILLING CODE 4310–55–C

* * * * *

Dated: March 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–7735 Filed 4–7–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 8, 2003

Part III

Environmental Protection Agency

40 CFR Part 261

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7475–5]

RIN 2050–AE84

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (''Headworks Exemptions'')

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing in today's action to add benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewater are exempted from the definition of hazardous waste under the Resource Conservation and Recovery Act (RCRA). The Agency studied two other solvents, 1,1,2-trichloroethane and 2-nitropropane, and is not proposing at this time to add them to the current exemption.

Besides adding the two solvents to the exemption, the Agency is proposing to provide flexibility in the way compliance with the rule is determined by adding the option of directly measuring solvent chemical levels at the headworks of the wastewater treatment system to the current requirements. Finally, the Agency also is proposing to make additional listed hazardous wastes (beyond discarded commercial chemical products) eligible for the *de minimis* exemption, as well as adding non-manufacturing facilities to those that qualify for this exemption if certain conditions are met.

The Agency is requesting comments on these and other potential exemptions involving wastes managed in a wastewater system regulated under the Clean Water Act (CWA).

The Agency is not proposing any changes or seeking comment on any other provisions of the so-called ''headworks rule,'' not specifically identified in this notice as subject to possible amendment. Nor will the Agency respond to any comments addressing any provisions of the headworks rule not specifically identified in this notice as subject to possible amendment.

DATES: To make sure we consider your comments on revisions to the wastewater treatment exemptions to hazardous waste mixtures, they must be postmarked by June 9, 2003.

ADDRESSES: Comments may be submitted electronically, or through hand delivery/courier or by mail. Send an original and two copies of your comments to: RCRA Docket Information Center, Office of Solid Waste, Environmental Protection Agency, Mailcode: 5305W, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Ron Josephson, phone 703–308–0442; e-mail: *josephson.ron@epa.gov*, or Laura Burrell, phone 703–308–0005, e-mail: *burrell.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Entities potentially affected by this action are generators of industrial hazardous waste, and entities that treat, store, transport and/or dispose of these wastes. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action.

LIST OF POTENTIALLY AFFECTED U.S. INDUSTRIAL ENTITIES

Item	Economic Subsector or Industry Identity		Description
	SIC code	NAICS code	
1	02	112	Agricultural production—livestock
2	20	311	Food & kindred products
3	22	313	Textile mill products
4	24	321	Lumber & wood products
5	25	337	Furniture & fixtures
6	26	322	Paper & allied products
7	28	325	Chemicals & allied products
8	29	324	Petroleum & coal products
9	30	326	Rubber & miscellaneous plastics products
10	31	316	Leather & leather products
11	32	327	Stove, clay, glass & concrete products
12	33	331	Primary metal industries
13	34	332	Fabricated metal products
14	35	333	Industrial machinery & equipment
15	36	334, 335	Electrical & electronic equipment
16	37	336	Transportation equipment
17	38	3333, 3345	Instruments & related products
18	42	493	Motor freight transportation & warehousing
19	4581	48819, 56172	Airports, flying fields, & airport terminal services
20	4789	488999	Transportation services nec
21	49	221	Electric, gas, & sanitary services
22	50	421	Wholesale trade—durable goods
23	51	422	Wholesale trade—nondurable goods
24	5999	453998	Miscellaneous retail
25	721	8123	Dry-cleaning & industrial laundry services
26	73	514, 532, 541, 561	Business services
27	80	621, 622, 623	Health services
28	87	712	Engineering & management services

LIST OF POTENTIALLY AFFECTED U.S. INDUSTRIAL ENTITIES—Continued

Item	Economic Subsector or Industry Identity		Description
	SIC code	NAICS code	
29	8999	54162	Miscellaneous services
30	91	921	Executive, legislative & general government
31	95	924, 925	Environmental quality & housing
32	97	928	National security & international affairs

Notes:

(a) This list is based upon industry codes reported to the USEPA RCRA hazardous waste 1997 ''Biennial Reporting System'' database by F002/F005 aqueous spent solvent generators which manage such wastes in wastewater treatment systems, supplemented by industry codes which have USEPA Clean Water Act ''Categorical Pretreatment Standards'' for indirect discharge of industrial wastewaters to POTWs (as of July 2002).

(b) The USEPA Office of Solid Waste matched 1987 2-digit level SIC codes to 1997 NAICS codes using the U.S. Census Bureau website: *http://www.census.gov/epcd/naics/nsic2ndx.htm#S0.*

(c) SIC = 1987 Standard Industrial Classification system (U.S. Department of Commerce's traditional code system last updated in 1987).

(d) NAICS = 1997 North American Industrial Classification System (U.S. Department of Commerce's new code system as of 1997).

(e) Refer to the Internet website *http://www.census.gov/epcd/www/naicstab.htm* for additional information and a crosswalk table for the SIC and NAICS codes systems.

This table lists the types of entities that EPA believes could be affected by this action, based on industrial sectors identified in the economic analysis in support of this proposal. A total of about 3,300 to 10,400 entities are expected to benefit from the proposed revisions to 40 CFR 261.3 in the 32 industrial sectors listed above, but primarily in the chemicals and allied products sector (*i.e.*, SIC code 28, or NAICS code 325). Other entities not listed in the table also could be affected. To determine whether your facility is covered by this action, you should examine 40 CFR part 261 carefully in concert with the proposed rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

Docket

EPA has established an official docket for this action under Docket ID No. RCRA–2002–0028. The official docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is the collection of materials that is available for public viewing at 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. You may copy up to 100 pages from any regulatory document at no cost. Additional copies are $0.15 per page.

Electronic Access

You may access this Federal Register document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2002–0028. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epamail.epa.gov,* Attention Docket ID No. RCRA–2002–0028. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the following paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send an original and two copies of your comments to: RCRA Docket Information Center, Office of Solid Waste, Environmental Protection Agency, Mailcode: 5305W, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028.

By Hand Delivery or Courier

Deliver your comments to: RCRA Docket Information Center, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. Such deliveries are only accepted during the Docket's normal hours of operation as identified in the ''How Can I Get Copies of This Document and Other Related Information?'' section.

How Should I Submit CBI To the Agency?

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0028. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

SUPPLEMENTARY INFORMATION: The index and many of the supporting materials are available on the Internet. You can find these materials at *http://www.epa.gov/epaoswer/hazwaste/id/headworks/index.htm.*

LIST OF ACRONYMS

Acronym	Meaning
1,1-DCE	1,1-dichloroethylene
1,1,2-TCA	1,1,2-trichloroethane
2-EE	2-ethoxyethanol
2-NP	2-nitropropane
ACC	American Chemistry Council
ANPRM	Advanced Notice for Proposed Rule Making
BRS	Biennial Reporting System
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
DAF	Dilution and Attenuation Factor
EPA	Environmental Protection Agency
EPACMTP	EPA Composite Model for Leachate Migration with Transformation Products
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
HWIR	Hazardous Waste Identification Rule

LIST OF ACRONYMS—Continued

Acronym	Meaning
IWEM	Industrial Waste Management Evaluation Model
LDR	Land Disposal Restrictions
MACT	Maximum Achievable Control Technology
MCL	Maximum Contamination Limit
NAICS	North American Industrial Classification System
NPDES	National Pollutant Discharge Elimination System
NRMRL	National Risk Management Research Laboratory
NSPS	New Source Performance Standard
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
POTW	Publicly Owned Treatment Works
ppm	parts per million
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RQ	Reportable Quantity
SIC	Standard Industrial Classification
TC	Toxicity Characteristic
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act
WWT	Wastewater treatment

Outline

I. Background

A. History of Headworks Rule

On May 19, 1980, the Agency listed several wastes as hazardous under RCRA. The current list as amended is found in 40 CFR part 261, subpart D. Among the listings are the F001–F005 listings under 40 CFR 261.31, which cover spent solvents as well as residuals from the recovery of spent solvents and spent solvent mixtures. In the same notice, EPA promulgated the ''mixture rule'' whereby a solid waste becomes regulated as a hazardous waste if it is mixed with one or more listed hazardous wastes.

After these provisions were promulgated, several industry groups became concerned that large volumes of wastewaters (and their resulting treatment sludges) would become listed hazardous wastes. After investigating the submitted data, the Agency, on November 17, 1981, (46 FR 56582–56589) promulgated a rule giving several exemptions to the mixture rule under 40 CFR 261.3(a)(2)(iv)(A)–(E). These exemptions are commonly called the ''headworks rule.''

The original headworks rule exemptions are divided into four categories: paragraphs (A) and (B) are concerned with solvents that may be contained in wastewaters when going to treatment, paragraph (C) is concerned with certain petroleum wastes, paragraph (D) with *de minimis* quantities of commercial chemical products that are lost to the wastewater treatment system during normal handling operations, and paragraph (E) with laboratory wastes and/or wastewaters discharged to wastewater treatment. The reasoning behind each of these exemptions is that the wastewater treatment system receives many different kinds of wastes, and the solvents, commercial chemical products, lab wastes, etc. are a minuscule and treatable part of the mix of wastewaters. The relatively small volumes of these organic constituents should be easily and effectively handled by the wastewater treatment system, so the risk to the environment would be negligible.

Under the solvents portion of the headworks rule, if the maximum total weekly usage of listed solvents divided by the average weekly flow of wastewater through the headworks of the facility's wastewater treatment system does not exceed the levels specified in paragraphs (A) and/or (B) of 40 CFR 261.3(a)(2)(iv), and the discharge of the wastewaters is subject to regulation under sections 402 or 307(b) of the Clean Water Act, the wastewater is exempt from the mixture rule, (and therefore any subsequent treatment sludge generation also would be exempt). Facilities which have eliminated the discharge of wastewaters also are eligible for this exemption. Those facilities that discharge or transport their wastewaters to privately-owned treatment works are not eligible for this exemption; however, the receiving facilities are eligible to receive the exemption if they comply with the provisions of the headworks rule.

The specified level in paragraph (A) is 1 ppm; the level in paragraph (B) is 25 ppm. *See* 46 FR 56582 (November 17, 1981) for more details. Carbon tetrachloride, tetrachloroethylene, and trichloroethylene were specified in paragraph (A). The remaining solvents listed under EPA Hazardous Waste Numbers F001, F002, F004, and F005 were put into paragraph (B). Since the solvents listed under EPA Hazardous Waste Number F003 are listed only for ignitability, and wastewater mixtures containing F003 solvents are not likely to be ignitable hazardous wastes, the headworks rule is not relevant for these wastes.

On February 9, 1995, the Agency listed wastes from the production of carbamate pesticides (60 FR 7824–7859). Included in the listing are further amendments to the headworks rule for wastes from this industry, 40 CFR 261.3(a)(2)(iv)(F) and (G). In addition, on August 6, 1998, the Agency revised § 261.3(a)(2)(iv)(C) as a part of the petroleum listing determination to include headworks provisions for these newly listed wastes (63 FR 42184).

In August 1999, EPA received a request from the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association) to add the four solvents (1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol) listed as hazardous wastes in 1986 to the headworks exemption. ACC also asked the Agency to allow direct monitoring as an alternative method by which compliance with the headworks rule may be determined. Other ACC-requested headworks rule changes include allowing those wastes listed in 40 CFR 261.31 and 261.32 to be added to the *de minimis* exemption, and expanding the headworks rule to include certain landfill leachates. EPA

included a request for comment on these and other ACC-suggested exemptions to the mixture and derived-from rules in the November 19, 1999 proposed Hazardous Waste Identification Rule (HWIR) (64 FR 63382). Many of today's proposed changes are an outgrowth of ACC's suggested revisions and the public comments that EPA received in response to the discussion of these suggested revisions in the 1999 HWIR proposal.

B. History of Solvent Listings

On May 19, 1980, the Agency listed 23 chemicals or classes of chemicals as hazardous wastes when used as solvents and subsequently spent. The listings can be found at 40 CFR 261.31, EPA Hazardous Waste Numbers F001–F005. As previously stated, in 1981 the Agency determined that small volumes of these spent solvents could be lost to wastewater treatment systems with negligible risk and therefore these spent solvents were exempted under the headworks rule (46 FR 56582–56589, November 17, 1981).

The Agency's spent solvent listings cover only those solvents that are used for their ''solvent'' properties—that is, to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media, and similar uses are covered under the listing (when spent). A solvent is considered ''spent'' when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

On the other hand, process wastes in which solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. (*See* 50 FR 53316, December 31, 1985.)

On February 25, 1986 (51 FR 6537–6542), the Agency listed four other solvents in the F002 and F005 categories. These solvents are 1,1,2-trichloroethane, benzene, 2-nitropropane, and 2-ethoxyethanol (or ethylene glycol monoethyl ether). These listings were in response to a Congressional mandate in the Hazardous and Solid Waste Amendments of 1984 (HSWA). At the time, the Agency did not determine whether or not to add these solvents to the headworks rule exemptions.

The Agency followed up the 1986 solvent listings with another listing determination concerning solvents as part of a court-ordered mandate. On November 19, 1998 (63 FR 64372–64402), the Agency finalized a decision not to list any of 14 selected chemicals as spent solvents under the current listings. The Agency concluded that many of these chemicals had little to no solvent use or very specialized solvent uses, and those that were used as solvents were managed in such a way that additional regulation was not warranted. As a part of the same court-ordered mandate, the Agency also published a ''Solvents Study'' (August 22, 1996) on seven additional chemicals. Most of these chemicals were found to have no solvent use at all.

II. Potential Changes to the Headworks Rule

The Agency intends to make a technical correction to § 261.3(a)(2)(iv)(A). The term ''spent'' was inadvertently omitted from this paragraph when promulgated. The term ''spent'' should have appeared immediately before the word ''solvent'' in the first clause of the sub-paragraph as it does in sub-paragraph (B) of § 261.3(a)(2)(iv). The Agency proposes to correct this inadvertent oversight by inserting the word ''spent'' in the appropriate place in sub-paragraph (A).

A. Adding Solvents to the Headworks Exemption

The American Chemistry Council requested that the Agency consider adding the four solvents listed in 1986 to the headworks exemption under 40 CFR 261.3(a)(2)(iv)(A) and (B). After evaluating these chemicals, the Agency is proposing to add two of the solvents (benzene and 2-ethoxyethanol) to the exemption. That is, the Agency is proposing to add benzene to the solvents with a total 1 ppm headworks limit under § 261.3(a)(2)(iv)(A) and is proposing to add 2-ethoxyethanol (2–EE) to the 25 ppm total limit under § 261.3(a)(2)(iv)(B). The exemption for benzene is conditioned on the use of aerated biological treatment units and the requirement that any surface impoundments used prior to secondary clarification be lined. The Agency is not proposing any action regarding 1,1,2-trichloroethane (1,1,2–TCA) and 2-nitropropane (2–NP) at this time. The Agency considered each solvent's risks individually and solicits comments on the appropriateness of the exemptions and the levels set.

Under today's proposed changes, if the total headworks concentration of methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, and 2-ethoxyethanol (added by today's proposal) do not exceed 25 parts per million (ppm), and the other conditions are met relating to Clean Water Act discharge and monitoring or measurement of constituents in the headworks of the wastewater treatment system (see below), the wastewater mixtures would no longer be considered hazardous waste. For mixtures of carbon tetrachloride, tetrachloroethylene, trichloroethylene, and benzene (added by today's proposal under certain conditions), the total headworks concentration cannot exceed 1 ppm, and also must meet the other conditions for it to no longer be considered a hazardous waste; in addition, mixtures containing benzene must be managed in an aerated biological wastewater treatment system without the use of unlined surface impoundments prior to secondary clarification.

The Agency is taking comment only on the evaluation and decisions made concerning benzene, 2-ethoxyethanol, 1,1,2-trichloroethane, or 2-nitropropane to the mixture rule exemption at 40 CFR 261.3(a)(2)(iv)(A) and (B). The Agency is not soliciting comments on solvents currently exempted. The Agency also is not taking comment on any spent solvent listing or any other hazardous waste listing. Nor will the Agency respond to any comments submitted addressing any currently exempted solvent, any spent solvent listing or any other hazardous waste listing.

1. General Approach to Risk Analysis

The Agency took a phased approach to the risk analysis for the four solvents under consideration. In the first phase, EPA conducted a protective screening analysis by comparing the regulatory levels in the current solvents headworks exemption (*i.e.*, 1 ppm and 25 ppm) with protective waste concentration limits (based on ingestion of ground water contaminated by surface impoundment leachate and inhalation of chemicals volatilized from an aerated tank) that EPA already had generated under previous efforts. These efforts calculated protective levels based on a more stringent 10^{-6} risk threshold. In addition, EPA evaluated data from EPA's National Risk Management Research Laboratory (NRMRL, part of the Agency's Office of Research and Development) treatability database to determine the probable effect of treatment in reducing chemical concentrations using existing treatment technologies. In the second phase, EPA performed a more detailed analysis for the chemicals (where possible). This more detailed human health risk assessment evaluated both the direct groundwater pathway and indirect

exposure pathways for chemicals released from either the wastewater or the resulting treatment sludge. This Phase II analysis used a 10^{-5} risk threshold that the Agency considers sufficiently protective of human health and the environment, and therefore uses for a variety of regulatory determinations.

Comparison to Existing Waste Concentration Limits

The screening analysis compared waste concentration estimates taken from previous modeling efforts for each of the four chemicals with applicable headworks exemption levels.

TABLE 1.—PRELIMINARY COMPARATIVE SOLVENT RISK DATA

Chemical name	Groundwater ingestion (mg/L)[1]	Direct inhalation[2] (mg/L)
benzene (c)	0.0027	3
2-ethoxyethanol (nc)	13	100,000
2-nitropropane (c)	N/A	0.04
1,1,2-trichloroethane (c)	0.0028	2

Footnotes:
(c) is a carcinogen, (nc) is a non-carcinogen
[1] Adult risk, surface impoundment, 10^{-6} risk, HQ = 1 (ground water modeling screening levels from IWEM)
[2] Adult risk, Aerated tanks, 90% sites, 90% receptors protected, 150 m, 10^{-6} risk, HQ = 0.25 (1999 Air Characteristic Study)

The Agency identified waste concentration screening estimates that would be protective of groundwater ingestion for three of the solvents (benzene, 2-ethoxyethanol, and 1,1,2-trichloroethane) from previous groundwater modeling efforts.[1] This comparison was conservative because it did not take into account any reductions in concentration due to treatment. For all three chemicals, the protective screening levels are lower than the existing standards for wastewaters entering treatment (*i.e.*, 1 ppm for benzene and 1,1,2-trichloroethane; and 25 ppm for 2-ethoxyethanol), indicating a need for further analysis. The Agency currently does not have sufficient information to generate an estimate of the toxicity of 2-nitropropane through ingestion, so no comparison could be made.

The Agency also has identified waste concentration estimates that would be protective of inhalation exposures to each of the four chemicals during volatilization from aerated tanks, also based on previous modeling efforts.[2] The numbers shown in Table 1 represent the maximum constituent concentration meeting the noted adult risk thresholds at specified receptor distances. The table shows that for three of the solvents (benzene, 2-ethoxyethanol, and 1,1,2-trichloroethane), the maximum modeled constituent level is above the exemption level proposed for these chemicals (*i.e.*, the existing standard of 1 ppm or 25 ppm was protective of this risk scenario) and thus, is considered protective. One of the constituents, 2-NP, is still of concern for the inhalation pathway (*i.e.*, the potential standard of 1 ppm would not meet the Agency inhalation risk thresholds). Additional discussion of 2-nitropropane follows below.

Analysis of Treatability Data

The NRMRL treatability database provides valuable information on effluent concentrations for specific chemicals at set input levels. For the purposes of today's proposal, Agency staff searched the database for aqueous treatment technology data on full-scale industrial facilities in the chemical or petroleum refining industries that have measured levels of any one of the four solvents entering the wastewater treatment system. Data generally are summarized from government references, such as effluent guidelines development documents. Aqueous treatment technology data are available for benzene and 1,1,2-trichloroethane. Only one non-industrial aqueous treatment technology data point exists for 2-ethoxyethanol, and no data are available for 2-nitropropane. The data show that for two of the solvents (benzene and 2-ethoxyethanol), wastewater treatment generally is effective in reducing concentrations below the levels of concern. Information on how to obtain the NRMRL data can be found at *http://www.epa.gov/ORD/NRMRL/treat.htm.* Further analysis of NRMRL data as applied to industrial users of the chemicals under consideration is available in *Proposed Rule to Expand the RCRA Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemption) in 40 CFR 261.3(a)(2)(iv) Technical Background Document* located in the public docket to today's rule.

Additional Human Health Risk Assessment

In the second phase, the Agency used the Chem 9/Water 9 model as an emissions source model (*i.e.*, to estimate the wastewater and sludge concentrations after each step in the wastewater treatment system) and the Industrial Waste Management Evaluation Model (IWEM) to perform a groundwater pathway risk assessment, using data from the 1997 Biennial Reporting System as input parameters.[3] EPA modeled wastewaters managed in both a non-aerated tank and unlined surface impoundment, and an aerated biological treatment system (which included both primary and secondary clarifier wastewater units). EPA also modeled sludges generated by wastewater treatment as managed in monofills and land farms. EPA modeled direct and indirect pathways, using chemical specific dilution and attenuation factors (DAFs) from EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP), to predict the constituent concentration at the point of human contact. Direct routes included exposure via ingestion of contaminated ground water and inhalation of vapors from showering with contaminated ground water. Indirect routes of exposure

[1] U.S. EPA. 2002. Industrial Waste Management Evaluation Model (IWEM) Technical Background Document. Office of Solid Waste, Washington, DC. EPA530–R–02–012.

[2] Volume III: Revised Risk Analysis for the Air Characteristic Study: Results, EPA 530–R–99–019c, U.S. EPA, November 1999. (on CD-ROM)

[3] The 1997 BRS data were used because that was the last year to include wastewater data. EPA queried the BRS for data on F002 (for 1, 1,2-trichloroethane) and F005 (for benzene, 2-ethoxyethanol, and 2-nitropropane) at facilities which generated wastewaters or managed treatment sludges. The data from the BRS do not state which solvent is linked to a specific waste code. To screen for a ''high end'' exposure analysis, EPA based the input parameters on the facility that is the 90th percentile in size for the given waste code (*i.e.,* that only ten percent of the facilities are larger).

included the consumption of contaminated vegetables and meats.

For each scenario, multiple iterations were conducted to determine both central tendency risk and ''high-end'' risk. In all cases, however, the influent concentrations for benzene and 1,1,2-TCA at the headworks were assumed to be the maximum exemption level allowable assigned to carcinogens (1 ppm), and for 2-ethoxyethanol the influent concentration was assumed to be the maximum allowable limit for non-carcinogens (25 ppm). The risk level was set at 10^{-5} (one chance in 100,000) for carcinogens and at a hazard quotient of 1 for non-carcinogens. Finally, for the indirect pathways, the medium used to grow plants was assumed to consist of 100% sludge (at the concentration generated by Chem 9/Water 9). Because none of the chemicals assessed were found to be of concern for the indirect pathways, EPA did not further refine this assumption. A full description of the data screening methodology can be found in the modeling background document to today's proposal.

2. Issues presented by each solvent

a. Benzene. Benzene is the most ubiquitous of the four solvents under consideration. It has uses in many industries, particularly in organic synthesis and catalyst formation. Benzene is used as a reactant as well as a medium for reactions to take place. Due to increased restrictions on benzene emissions (such as MACT standards, etc.), chemical industries have been encouraged to find alternatives to benzene. It is also one of the more toxic, being classified by EPA as a Class A carcinogen.

As presented in Table 1 of this notice, existing modeled waste concentration limits show that the 1 ppm standard would be protective for the direct air inhalation pathway, even with the more stringent 10^{-6} risk threshold. Moreover, data from the NRMRL treatability database demonstrate that, after the specified treatment, effluent concentrations for benzene generally are below the groundwater modeled level of 0.0177 mg/L (17.7µg/L), even when the influent benzene level approaches 1 mg/L (1,000µg/L). Note that treatability numbers are measured at the effluent of a wastewater treatment system, not in the treatment unit itself. However, we believe this comparison is helpful because it illustrates that levels of benzene below concern are achievable in industrial wastewater treatment systems, even when the input level approaches 1 ppm.

Data from the groundwater pathway human health risk analysis also support the addition of benzene to the headworks exemption, with certain conditions. For wastewaters, non-aerated treatment scenarios resulted in exposures above the level of concern for all components, but aerated biological treatment scenarios resulted in unacceptable risk levels only when the primary clarifier wastewaters were managed in an unlined surface impoundment. For sludges, non-aerated treatment sludges and aerated biological treatment primary sludges managed in landfills resulted in risk levels above the level of concern, but aerated biological treatment secondary sludges managed in landfills were below the levels of concern. Indirect exposures to benzene from management of sludges in land farms were not of concern, regardless of treatment type. Benzene exceeded the risk of 10^{-5} for each of the non-aerated scenarios and two components from the aerated biological treatment system (primary clarifier wastewaters being managed in an unlined surface impoundment and primary clarifier sludge being managed in a monofill).

Based on the above results, the Agency is proposing to add benzene to the headworks exemption at the level of 1 ppm with the condition of certain management practices. Specifically, the proposed conditions are that wastewaters containing benzene be managed in aerated biological waste management units and that any surface impoundments used prior to secondary clarification be lined. Aerated biological treatment facilitates biodegradation, reducing the concentration of benzene in the sludge. (*See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule,* U.S. EPA 2002, for further information on assumptions used for biodegradation in aerated biological treatment systems). Although the modeled risk for managing primary clarifier sludge (that is generated prior to aerated biological treatment) in a monofill exceeded 10^{-5}, EPA does not believe that additional conditions are needed to be protective of this scenario, primarily because these sludges still would be considered hazardous wastes if they exhibit the Toxicity Characteristic for benzene of 0.5 mg/L.

The Agency seeks comment on the proposal to add benzene to the headworks exemption at the level of 1 ppm with the conditional management requirements, on the necessity of the contingent management requirements, the level of biodegradation achieved through aerated biological treatment systems, industrial solvent use levels of benzene, and current industrial treatment systems and management practices.

b. 2-ethoxyethanol. 2-ethoxyethanol is the least toxic of the four chemicals under consideration, and is the only non-carcinogen. Due to concerns about workplace exposure and the availability of substitute chemicals, use of 2-ethoxyethanol has been declining in the United States.

As presented in Table 1 of this document, existing modeled waste concentration limits show that the 25 ppm standard would be protective for the direct air inhalation pathway, even without additional treatment. In addition, the limited treatment information on 2-ethoxyethanol available in the treatability database show that treatment can be effective in further reducing the concentration of 2-ethoxyethanol in wastewaters. However, groundwater screening pathway data for 2-ethoxyethanol, also in Table 1, show protective screening levels slightly below the 25 ppm standard (*i.e.*, 13 ppm), indicating a need for further analysis.

The more detailed groundwater pathway human health analysis does support, however, the addition of 2-ethoxyethanol at 25 ppm to the headworks exemption. Both direct and indirect analyses showed 2-ethoxyethanol at 25 ppm in the headworks poses no significant human health risk. (*See Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule,* U.S. EPA 2002).

The Agency seeks comment on the proposal to add 2-ethoxyethanol to the headworks exemption at 25 ppm.

c. 2-nitropropane. The Agency has very little production, release and toxicity data on 2-nitropropane. The 1999 Toxics Release Inventory (TRI) only listed three facilities nationwide reporting the chemical present in wastewaters. The treatability database from NRMRL has no aqueous technology data on 2-nitropropane. The Agency has only inhalation toxicity information to use for risk modeling purposes. We believe that the available risk information is not adequate to develop an oral benchmark for 2-nitropropane. 2-Nitropropane failed to pass the Phase I air risk screen by a factor of 25 (in contrast to the other three solvents passing, as indicated in Table 1). Because of the large margin of failure for 2-nitropropane, we considered it unlikely that 2-nitropropane would pass a more robust Phase II type of analysis. Based on the large margin of failure in the Phase I screen and the extremely low reported

usage that the Agency found for 2-nitropropane, we determined that continued analysis of 2-nitropropane was not likely to affect the regulatory status of these wastes significantly.

Accordingly, the Agency is not proposing any action at this time on 2-nitropropane under 40 CFR 261.3(a)(2)(iv)(A) or (B). The Agency seeks comment on the availability of toxicity information on 2-nitropropane and the current level of use as a solvent.

d. 1,1,2-trichloroethane. According to the Agency's listing background document of 1985 [4], most 1,1,2-trichloroethane (1,1,2-TCA) was used as a vinylidene chloride feedstock. The rest had some solvent use, such as a solvent for waxes, resins, fats, rubbers, and coating cleaner.

As presented in Table 1 of this notice, existing modeled waste concentration limits show that the 1 ppm standard would be protective for the direct air inhalation pathway. However, the groundwater modeled level of 0.0028 mg/L indicates potential risk at the 1 ppm standard from the groundwater pathway, and data from the NRMRL treatability database do not appear to demonstrate a significant reduction in chemical concentration of 1,1,2-TCA during treatment, especially when the input level approaches 1 ppm.

Data from the more detailed groundwater pathway human health analysis also do not support the addition of 1,1,2-TCA at 1 ppm to the headworks exemption. While 1,1,2-TCA was found to be below the level of concern for indirect exposures, wastewater concentrations resulted in risks greater than 10–5 for sludges and wastewaters from both aerated biological treatment and non-aerated treatment units (both for groundwater ingestion and inhalation of shower vapors). In addition, 1,1,2-TCA undergoes transformation to 1,1-dichloroethylene (1,1-DCE) due to hydrolysis while being transported in the subsurface environments. The parent compound, 1,1,2-TCA, and the transformation product, 1,1-DCE, have similar fate characteristics. The transformation product is more toxic than the parent compound by approximately an order of magnitude. However, the modeling results are based on the parent compound only. Therefore, risk from 1,1,2-TCA will likely be even greater than shown in the headworks exemption risk background document (US EPA, 2002).

[4] 'Listing Background document for Four Spent Solvents and Still Bottoms From Recovery of These Solvents, USEPA, January 22, 1985, Docekt No. F–85–LSSP–FFFFF, document no. F005.''

Due to the indication that significant risks occurred in the majority of waste management scenarios as modeled, the Agency is not proposing any action on 1,1,2-TCA at this time under § 261.3(a)(2)(iv)(A). The Agency seeks comment on the results of this risk analysis and current solvent use.

B. Revising Headworks Compliance Monitoring Method

The Agency is proposing to expand the ways in which compliance with the headworks rule may be determined by adding the option of directly measuring solvent chemical levels at the headworks of the wastewater treatment system. This change would affect 40 CFR 261.3(a)(2)(iv)(A), (B), (F), and (G). Under the current solvent exemptions, a facility must use a ''mass balance'' approach to calculate the theoretical headworks concentration (via solvent usage) to be in compliance with the rule. That is, a facility must look at inventory records of the amount of solvent purchased weekly and divide that amount by the average weekly flow of wastewater through the headworks of the wastewater treatment system. The amount known not to go into the wastewater treatment system (*e.g.*, lost to product, removed as still bottoms) may be subtracted from the calculation. However, the amount volatilized may not be subtracted to ensure that the solvent wastes were properly treated and to minimize losses of these chemicals through volatilization.

The Agency received a request from ACC to allow another compliance methodology. Under this method, facilities would be allowed to perform a direct measurement of the concentration of solvent chemicals in the wastewater treatment system. According to ACC, use of direct measurement is more accurate than calculating a mass balance over the system. In addition, they point out that with the advent of MACT standards and NSPS requirements under the Clean Air Act and its amendments over the 21 years since the headworks rule was first promulgated, these standards should prevent the intentional volatilization about which the Agency was initially concerned.

When the original headworks rule was promulgated, the Agency was concerned that the exemption might encourage facilities to volatilize solvents before a defined measurement point, thus allowing facilities to claim compliance with the exemption, but in reality transferring the waste management problem to another medium. As a result, the Agency structured the exemption to require facilities to use the ''mass balance'' approach to calculate whether or not they met the concentration thresholds set forth in the rule. As noted earlier, facilities are allowed to subtract the amount of solvents known not to go into the wastewater treatment system (*e.g.*, from losses to product, still bottoms, etc.), but not losses due to volatilization (See 46 FR 56585, footnote 24, November 17, 1981). Use of the mass balance approach did not require facilities to define a specific point to measure levels of solvents entering the wastewater treatment system.

Since the 1981 rule was published, the Agency has promulgated numerous air emissions regulations for new and existing sources under the Clean Air Act (*e.g.*, MACT and NSPS programs). The background document to today's proposal *Proposed Rule to Expand the RCRA Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemption) in 40 CFR 261.3(a)(2)(iv) Technical Background Document)* lists the industries affected by these Clean Air Act programs. Because of the coverage of these regulations, the Agency believes that concerns about volatilization have been addressed, and that allowing facilities a greater choice of compliance methodologies is appropriate.

Use of this method also means that the measured level(s) of the chemical(s) at the headworks may not exceed the total regulatory level, regardless of its (or their) origin in the process, as long as some of it (or them) has been used as a ''solvent.'' Therefore, direct measurement could overstate the amount of solvent(s) if the chemical(s) were used at the facility in other applications (*e.g.*, impurity in other feedstocks, product component, reaction byproduct, etc.) Facilities that wish to take advantage of the direct monitoring approach must report the entire concentration of the chemical in question if any of it was used as a solvent.

The Agency is proposing to give facilities a choice of using direct measurement or mass balance to determine compliance with the headworks rule. Facilities that choose to use direct monitoring must be subject to Clean Air Act regulations that minimize fugitive process or wastewater emissions (*e.g.*, MACT standards under 40 CFR part 61 or 63 or NSPS requirements under 40 CFR part 60). We are not proposing any changes to, nor are we seeking comment on the regulatory standard set in the 1981 rule, that a facility may not exceed the total solvent level set forth in § 261.3(a)(2)(iv)(A) or (B) in order to comply with the rule. The Agency will

not respond to comments addressing this standard.

One of the main implementation issues in utilizing the direct monitoring method of compliance is understanding the point in the process at which a facility determines whether it meets the limits in § 261.3(a)(2)(iv)(A) or (B). In response to this issue, the Agency is setting an informal definition of ''headworks'' so facilities and implementing agencies can understand how the monitoring point is described. The guidance the Agency is providing is intended to mirror the language in the 1981 preamble; namely, that the headworks is the location at which final combination of raw process wastewater streams typically takes place (46 FR 56582, November 17, 1981).

The Agency is not proposing to set a regulatory definition of the term headworks. Instead, the Agency prefers to describe the term for both maximum flexibility and understanding. For the purposes of this rule, headworks can include a central catch basin for industrial wastewaters, a pump station outfall, equalization tank, or some other main wastewater collection area that exists in which transport of process wastewaters stops and chemical or biological treatment begins.

The Agency seeks comment as to whether the description for headworks given above is adequate, or if a more detailed description is needed. Commenters may wish to provide examples to illustrate working definitions of headworks or where confusion about a headworks definition might exist.

The Agency proposes that facilities that want to take advantage of using direct monitoring develop a site-specific sampling and analysis plan that demonstrates compliance with the weekly average standards set for the appropriate solvent(s). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of appropriate constituents to be monitored. In addition, facilities would be required to file a copy of the sampling and analysis plan with the Regional Administrator or State Director, as the context requires, or an authorized representative (*i.e.,* the ''Director,'' as defined in 40 CFR 270.2), and would need to confirm that such sampling and analysis plan had been received prior to the commencement of direct monitoring at the facility. Examples of confirmation include certified mail return receipt, or written confirmation of delivery from a commercial delivery service. Upon confirmation that the sampling and analysis plan has been delivered successfully to the overseeing agency, the facility would be allowed to commence direct monitoring to demonstrate compliance. The filing of the sampling plan would suffice for initial notification. EPA does not propose to require any other formal notification to the regulator, unless a change in the facility's operations mandates a change in monitoring. Confirmation that the overseeing agency has received the sampling and analysis plan would not imply, however, that the package has been reviewed or approved. EPA does not propose to require that the overseeing agency issue a formal approval of the sampling and analysis plan. However, the Director may reject the sampling and analysis plan if he/she finds that (1) the sampling and analysis plan fails to include the above information, or (2) the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected.

The Agency seeks comments from the public as to the benefits of the changes and if they are sufficiently protective of the environment. The Agency would like comments as to whether the best approach is (1) to leave the current system ''as is,'' or (2) to give facilities a choice of mass balance or direct monitoring techniques. The Agency also seeks comment as to whether the overseeing agency should either approve a sampling and analysis plan, or require facilities to wait a certain period of time (if the state or EPA has not responded) before embarking on a direct monitoring program, and how a facility suspected of violating the exemption limits may be made to demonstrate compliance with the weekly standard.

Under the existing headworks exemption rule (46 FR 56585, November 17, 1981), facilities must be prepared to demonstrate (for the purposes of an inspection or audit) that they meet the mass balance criteria of the rule. Facilities opting to use direct monitoring could comply with this requirement by keeping monitoring records on site to show an inspector that the new criteria are being met. Under 40 CFR 268.7(a)(7), a facility is required to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)). EPA has estimated the burden associated with the proposed reporting requirements when a facility chooses the direct monitoring option. Those estimates are presented in section IV.D of today's proposal.

The Agency is soliciting comment on how to minimize overlapping reporting requirements. Under EPA's Water program, (*e.g,* 40 CFR 122.48 and 403.12), facilities may be required under their permits to monitor these same constituents at the point of discharge (*i.e.*, effluent monitoring). The Agency recognizes that current requirements under the Clean Water Act do not require monitoring of the wastewater treatment system influent (or headworks). However, EPA notes some facilities may collect and may report such information. EPA seeks comment on whether or not facilities are currently performing influent monitoring for other media programs. If so, the Agency solicits comments on the frequency of the influent monitoring and reporting and if this information can be used to determine compliance with the headworks rule.

The Agency also seeks comment on the proposed use of other environmental regulatory program requirements to integrate the information needed for this exemption. Specifically, the Agency is interested in how much of the information is contained in air or water permit monitoring/reporting requirements, how easy modifying another regulatory program's requirements to contain these data would be, and what steps facilities are taking to conduct this kind of monitoring already.

C. Exempting Scrubber Water Derived From Solvent Combustion

The issue of whether to exempt incinerator scrubber water first was raised by commenters to the 1999 HWIR proposal. Under the current headworks rule, the exemptions under 40 CFR 261.3(a)(2)(iv)(A) and (B) are from ''normal losses'' from manufacturing operations and not from wastes that are already separated from the wastewaters or that had been removed from the process previously. Many spent solvents are sent to hazardous waste combustors. The combustors have scrubbers, used for air pollution control, and these

scrubbers usually generate an aqueous stream that is easily treatable in the wastewater treatment system. The scrubber waters, however, are considered ''derived from'' residuals of the spent solvents, and since they are not incidental losses to the wastewater treatment system, they are not currently eligible for the headworks exemptions.

In the carbamates final rule (60 FR 7824–7859, February 9, 1995), the Agency decided that scrubber waters from the incineration of carbamate production wastes are eligible for the headworks exemptions that were promulgated under that listing determination. The justification for this decision was that these scrubber waters would be comparable in expected constituents and concentration levels with the already-exempted carbamate wastewaters.

Based on the rationale in the carbamates rule, the Agency is proposing that scrubber waters derived from the combustion of spent solvents and sent to a facility's wastewater treatment system qualify for the exemption under 40 CFR 261.3(a)(2)(iv)(A) and (B). Similar to the carbamates decision, we believe that the scrubber waters derived from combustion of spent solvent wastes will be comparable in expected constituents with spent solvent wastewaters. In addition, the solvent constituents receive at least 99.99% destruction and removal during incineration, the incinerator scrubber water is typically a small percentage of the flow into a wastewater treatment system, and the wastewater treatment system further reduces remaining constituent concentrations. The Agency requests comment on this proposed revision.

D. Exempting Leachate Derived From Solvent Wastes

Another suggested revision to the headworks rule is to exempt leachate from landfills that accepted only F001–F005 spent solvent wastes. Under current rules, leachate resulting from the disposal of more than one listed waste under 40 CFR part 261, subpart D is classified as EPA Hazardous Waste Number F039. Since no exemption currently exists under the headworks rule for F039 liquids, these leachates (even if derived solely from spent solvents) cannot be inserted into a facility's wastewater treatment system and receive an exemption from the mixture rule.

BRS data from 1997 show the presence of 12 hazardous waste landfills that accept only F001–F005 spent solvent hazardous wastes and no other listed wastes. These landfills are both on-site at manufacturing facilities and commercial hazardous waste landfills. In addition, three other landfills list characteristic waste codes, commercial chemical products, and lab packs with the spent solvent wastes. The waste codes in question may be associated with the solvents themselves. For example, D001 wastes are ignitable, and may be from the same solvents. The U226 waste code corresponds to 1,1,1-trichloroethane as a commercial chemical product. The chemical, when used as a solvent and subsequently spent, would carry an F001 or F002 waste code.

The Agency does not have sufficient data concerning the variability of these leachates to propose adding them to the exemption at this time. The Agency seeks comment as to whether such an exemption would be advisable, the relative volumes of leachate to other wastewaters going for treatment, and the relative concentrations of other contaminants in leachate versus those present in the other wastewaters at these facilities. The Agency also seeks comment as to whether landfills that accept characteristic wastes, lab packs, or commercial chemical products that correspond to the chemicals that are also listed spent solvents should be eligible to have leachate sent to a facility wastewater treatment system and be exempted.

At this point, the Agency is not proposing an exemption for solvent-only leachate. Therefore, in the final rule to today's proposal, the Agency does not expect to include any regulatory language exempting any of these leachates. Rather, the Agency is considering the leachate exemption discussion being advanced in today's proposal as an Advanced Notice of Proposed Rulemaking (ANPRM).

E. Exempting Other Types of Leachate

The ACC also has requested that the Agency consider establishing an exemption to allow facilities with unlined surface impoundments attached to wastewater treatment systems to accept hazardous waste landfill leachate into the wastewater treatment system without the need for the unlined surface impoundment to obtain a hazardous waste treatment, storage, and disposal permit.

At this time, EPA still is considering the suggested regulatory exemption for leachate derived-from landfilled hazardous waste as well as other specific exemption options, but we first need to evaluate several important issues. Most hazardous waste leachate is regulated under a separate waste code, F039. To date, we have received no information that would cause us to reconsider that listing, although we would welcome any data that might be helpful in such a re-evaluation. However, in the most recent EPA study of landfill leachate characteristics (65 FR 3007, January 19, 2000), we found considerable differences between the leachate samples from hazardous and non-hazardous landfills in both numbers of constituents of concern and their concentrations. Specifically, hazardous waste landfill leachate contained a greater number of constituents than non-hazardous waste landfill leachate, and the constituents found in both hazardous and non-hazardous waste landfill leachate generally were present in hazardous waste landfill leachate at concentrations an order of magnitude higher than those found in non-hazardous waste landfill leachate [5]. These pollutants can include many organic hazardous constituents not covered by the Toxicity Characteristic. Absent a risk assessment, it is not possible to determine whether the levels of these constituents pose unacceptable risk. However, the presence of these constituents is a strong indication that more study would be needed before developing an exemption for hazardous waste leachate.

One option would be to limit a possible future exemption to leachates from captive, on-site hazardous waste landfills. The Agency would be inclined to propose this limitation because landfills that accept off-site wastes will likely have a different constituent mix from those constituents in the facility wastewater treatment system. The Agency again seeks comment as to whether such an exemption would be advisable, the relative volumes of leachate to other wastewaters going for treatment, and the relative concentrations of other contaminants in leachate versus those present in the other wastewaters at these facilities.

At this point, the Agency is not proposing an exemption for non-solvent leachate. Therefore, the Agency does not expect to include any regulatory language in the final rule to this proposal without first seeking comment on a more fully-developed proposal.

F. Expanding the De Minimis Exemption

The current mixture rule exemption under 40 CFR 261.3(a)(2)(iv)(D) is a provision to remove from regulation small amounts of commercial chemical products (P- and U-listed wastes under

[5] Development Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category, EPA–821–R–99–019, U.S. EPA, January 2000.

40 CFR 261.33) lost to a wastewater treatment system from manufacturing operations. Small amounts of § 261.33 materials which are being produced by, or used as raw product in, a manufacturing process are often unavoidably lost in normal material handling operations. For example, small amounts of raw material are lost in various unloading or material transfer operations (*e.g.*, small drippage when transfer hose lines are disconnected, and fugitive dust when certain materials are emptied from bags or transferred from bins). Additionally, small amounts of manufactured products or intermediates are lost in material handling, or storage activities (*e.g.*, losses from packing of pumps used to transfer product, unanticipated spills, relief valve discharges, rinsates from drained or otherwise emptied containers, and purgings associated with pressure relief or sample collection). 46 FR 56582 at 56586 (November 17, 1981).

Thus, the *de minimis* exemption is intended to apply to minor, inadvertent releases of waste to a wastewater treatment system as a result of normal operations at a well-maintained facility. The *de minimis* exemption currently does not apply to the discarding of these materials during abnormal manufacturing operations (*e.g.*, operation malfunctions resulting in substantial spills), or the discarding of these materials where they are not being used as raw materials or are not being manufactured as intermediates or final products. *Id.*

The Agency is proposing to broaden the scope of the *de minimis* exemption in two ways. First, we propose to expand the eligibility for the exemption beyond manufacturing operations. Second, we propose to expand the types of waste that are eligible for the exemption. This revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

The original headworks exemption applies only to manufacturing operations; such facilities are likely to have wastewater treatment systems with Clean Water Act (CWA) permits that provide a means to assess and limit discharges of the specific chemicals manufactured there. However, the Agency realizes that many raw material storage terminals, hazardous waste facilities, etc. also may have effective wastewater treatment systems that prevent the release of small amounts of spilled wastes from posing a threat to human health or the environment. The Agency also realizes that under the CWA, many of these facilities have NPDES permits or permits under local CWA pretreatment programs that limit discharges and require monitoring for specific constituents (40 CFR part 122, 40 CFR part 403). Limitations on discharges of specific constituents implement CWA requirements to ensure that direct dischargers achieve effluent limitations based on best available technology and that indirect dischargers to POTWs comply with pretreatment standards. These limitations and standards act as another protective mechanism to prevent releases of toxic constituents from a facility's wastewater discharges and are an important consideration in the decision to propose this expansion of the *de minimis* exemption.

The Agency is therefore proposing that the *de minimis* eligibility be expanded to non-manufacturing sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table ''Treatment Standards for Hazardous Wastes'' in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.*, Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether. By conditioning the expanded exemption on having a CWA permit that addresses the specific chemicals associated with the listed waste, EPA will help ensure that the wastewater treatment systems at non-manufacturing facilities will effectively treat such chemicals. However, this proposed condition would also mean that some raw material storage terminals or other non-manufacturing facilities that do not meet this condition would not be eligible to claim the *de minimis* exemption. This is because, while some non-manufacturing facilities' discharges are covered by general permits (*e.g.*, storm water discharge permits), they do not specifically address hazardous constituents likely to be present in the listed waste. (In contrast, the manufacturing facilities that are eligible for the current exemption are likely to have wastewater treatment systems with CWA permits that provide a means to assess and limit discharges of the specific chemicals.)

The Agency also is proposing to expand the *de minimis* exemption to wastes other than listed commercial chemical products for sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table ''Treatment Standards for Hazardous Wastes'' in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.,* Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether.

The original headworks exemption only applies to commercial chemical products; CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of these products, which because of their intrinsic value are not likely to be discharged in large volumes. In its correspondence with the Agency, ACC requested that this portion of the headworks rule be expanded to include *de minimis* amounts of industrial wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes). *De minimis* releases of these F- and K-listed wastes, similar to those from P- and U-listed wastes, arise from losses during materials handling operations in which these wastes are being generated or being segregated for treatment and disposal. ACC's position is that facility wastewater treatment systems are capable of handling small amounts of F- or K-wastes spilled to the system.

The Agency agrees that very small releases of industrial waste to a facility's wastewater treatment system are not likely to have a significant effect upon that system, the quality of facility effluent discharges, solid wastes generated, occupational safety and health, and human health and the environment. Moreover, the Agency believes that the constituent-specific CWA permitting requirements under section 402 or under section 307(b) local pretreatment program for eligible facilities provides assurance that releases of these wastes to a facility's wastewater treatment system will be kept to a minimum. CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of commercial chemical products, but may not specifically address constituents in F- and K-listed wastes. Therefore, to ensure that release of *de minimis* levels of these constituents will not put human health and the environment at risk, and to provide facilities an incentive to minimize the loss of F- and K-listed wastes, the Agency is proposing that facilities which discharge wastewaters have CWA permits that limit appendix VII and Land Disposal Restriction constituents associated with the specific wastes.

The Agency further notes that the headworks exemption does not negate the applicability of the Toxicity Characteristic (TC) (40 CFR 261.24) to the wastewater treatment sludge. Therefore, facilities have an additional

incentive to reduce loadings of certain toxic constituents into the wastewater treatment system to prevent the sludge from exhibiting the TC.

The Agency considers hazardous substance release reporting under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9603 as an additional regulatory backstop to both of the proposed expansions to the headworks exemption. A release of a hazardous substance in a quantity equal to or greater than the Reportable Quantity (RQs) established for that hazardous substance triggers a requirement to notify the National Response Center of that release. *See* CERCLA section 103 (42 U.S.C. 9603(a)). Congress established an initial RQ for all hazardous substances of one pound (unless a higher RQ already had been established under CWA section 311(b)(4)) until EPA establishes an RQ for the substance by regulation. CERCLA section 102(b) (42 U.S.C. 9602(b)).

In setting RQ's, EPA takes into account the potential hazards posed by the chemicals of concern. The methodology for setting RQs is discussed in the May 25, 1983, **Federal Register** (48 FR 23552). RQs for hazardous substances are found in 40 CFR 302.4.

Similar to the CWA permits, the RQ acts as a protective mechanism discouraging releases of hazardous wastes to the environment by requiring facilities to report chemical releases above a certain threshold. In general, facilities must report releases of hazardous substances immediately to the National Response Center and State or Local Emergency Planning Center, depending on the type of release. While this reporting does not prevent releases, it requires facilities to be accountable for excess releases of hazardous substances when they occur. Because all hazardous wastes also are listed as hazardous substances, discharge of hazardous wastes in a facility's wastewater treatment system that cause a release to the environment above reporting thresholds must be reported to the appropriate authorities. While excess releases of hazardous wastes, such as in an upset or pass-through situation, do not qualify for the *de minimis* exemption, the RQ program, by its reporting requirements, provides an additional tool for minimizing hazardous waste discharges through a wastewater treatment system.

It is important to note that the Agency is not increasing the amount of waste that can be described as a *de minimis* release in this proposal. Moreover, these proposed expansions to the types of waste and facilities eligible for the *de minimis* exemption should not be construed as reducing the scope or application of any hazardous waste listing under 40 CFR 261.31 and 261.32. For example, the F006 listing covers wastewater treatment sludges from electroplating operations. For facilities that normally generate F006 wastes, a release of electroplating wastewaters to the treatment system would *still* result in the generation of F006 wastes. A facility could not use the *de minimis* exemption to claim that it is not generating F006 listed hazardous wastes. Finally, as stated previously, this revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

As with any exemption from the definition of solid or hazardous waste under §§ 261.2–261.6 (including this *de minimis* exemption), 40 CFR 268.7(a)(7) requires a facility to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)).

In light of the limiting conditions and protective regulatory mechanisms we have discussed above, the Agency is proposing to expand the *de minimis* exemption (1) to non-manufacturing facilities, and (2) to wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes) released in *de minimis* quantities when they meet certain conditions. Specifically, facilities discharging wastewaters (whether manufacturing or non-manufacturing) that are attempting to qualify for this expanded eligibility must have CWA permits under sections 307(b) or 402 that contain limits for the specific chemicals for which each waste was listed (in 40 CFR part 261, appendix VII) as well as hazardous constituents in 40 CFR 268.40 for which each listed waste has a treatment standard under Land Disposal Restrictions or must have eliminated the discharge of wastewaters altogether. The two proposed expansions will be considered independently; the Agency seeks comment as to the adequacy of the limiting conditions in ensuring protection of human health and the environment, the prevalence of facilities meeting the conditions (*e.g.*, having CWA permits that limit the constituents associated with the listed waste), and on the advisability of expanding each part of the exemption.

G. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See also* 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

Today's rule is proposed pursuant to non-HSWA authority. The proposed changes in the conditional exemptions from the definition of hazardous waste under the headworks rule are less stringent than the current Federal requirements. Therefore, States will not be required to adopt and seek authorization for the proposed changes. EPA will implement the changes to the exemptions only in those States which are not authorized for the RCRA program. Nevertheless, EPA believes that this proposed rulemaking has considerable merit, and we thus strongly encourage States to amend their programs and become Federally-authorized to implement these rules once they become final.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal. EPA's economic analysis suggests that this rule is not economically significant under Executive Order 12866, because EPA estimates that the overall national economic effect of the rule is $11.4 million to $48.6 million in average annual potential cost savings for RCRA regulatory compliance. The following table presents an itemization of EPA's estimated count of affected facilities, affected annual RCRA waste quantities, and estimated annual cost savings for each of the five main features of this proposed rule.

SUMMARY OF ESTIMATED POTENTIAL NATIONAL ECONOMIC IMPACT FROM THE PROPOSED REVISIONS TO THE ''HEADWORKS EXEMPTION'' OF THE RCRA HAZARDOUS WASTE MIXTURE RULE (40 CFR 261.3(A)(2)(IV) (A) TO (E))

Item	Proposed regulatory revision to ''Headworks Exemption''	Count of potentially affected entities (eligible industrial facilities)	Annual quantity of potentially affected (eligible) RCRA hazardous waste (tons/year)	Estimate of average annual economic impact* ($/year)
1	Add two F005 spent solvents (benzene & 2-ethoxyethanol) to the ''headworks exemption'' for the RCRA hazardous waste mixture rule**.	115 to 1,800	0.036 to 0.594 million tons/year spent solvent (aqueous & non-aqueous & non-aqueous forms).	$0.32 to $5.65 million/year in spent solvent waste management cost savings (netting-out implementation paperwork costs).
2	Provide ''headworks exemption'' for F001 to F005 spent solvent hazardous waste combustion ''scrubber waters''.	3 to 9	0.20 to 0.61 million tons/year scrubber wastewater.	$0.53 to $1.58 million/year in scrubber wastewater management cost savings.
3	Allow ''direct monitoring'' of F001 to F005 spent solvent waste concentrations in headworks influent wastewaters, in lieu of ''mass balance'' computations.	1,800 to 7,300	1.13 to 4.58 million tons/year spent solvent wastes (aqueous & non-aqueous forms).	$10.09 to $40.88 million/year in spent solvent waste management cost savings.
4	Revise RCRA hazardous waste ''de minimis'' exemption to include RCRA F- & K-listed wastes.	70	30 tons/year spill incidents.	$0.03 million/year in spill response cost savings.
5	Revise RCRA hazardous waste ''de minimis'' exemption to include non-manufacting facilities.	1,270	570 tons/year spill incidents.	0.48 million/year in spill response cost savings.
	Column totals	3,300 to 10,400	1.37 to 5.78 million tons/year.	$11.4 to 48.6 million/year cost savings.

*Economic impact based on year 2000 price levels for waste management systems.

**Hypothetical expansion of the RCRA ''headworks exemption'' to include all four chemical solvents examined in the proposed rule, would only result in addition of one wastestream, at an additional annual cost savings of about $19,000 (consisting of 17,000 tons/year aqueous spent solvent).

A detailed presentation of EPA's methodology, data sources, and computations applied for estimating the number of affected entities (industrial facilities) and economic impacts attributable to today's proposal is provided in the ''Economic Background Document'' to this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1189.12). A copy of this ICR may be obtained from Susan Auby by mail at Collection Strategies Division;

U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 566–1672, and by e-mail at *auby.susan@epamail.epa.gov.* A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.*

EPA proposes the following conditions for reporting and recordkeeping by generators: The rule requires generators wanting to demonstrate compliance with the headworks rule through direct monitoring to submit a one-time copy of their sampling plan to the EPA Regional Administrator (or the state Director in an authorized state) and to maintain all records concerning such direct monitoring for a minimum of three years. The sampling plan requirements for the direct monitoring will be site specific. As with all other exemptions and exclusions from the definition of hazardous waste, a facility is required under 40 CFR 268.7(a)(7) to place a one-time notice concerning waste generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site files. Generally, such notification, as well as certifications, waste analysis data, and other documentation must be kept for a period of three years, unless an enforcement action by the Agency extends the record retention period (§ 268.7(a)(8)).

EPA estimates that the total annual respondent burden for the new paperwork requirements in the rule is approximately 16,564 hours per year and the annual respondent cost for the new paperwork requirements in the rule is approximately $15 million. However, in addition to the new paperwork requirements in the rule, EPA also estimated the burden and cost that generators could expect as a result of complying with the existing RCRA hazardous waste information collection requirements for the excluded materials. Because the addition of benzene and 2-ethoxyethanol would increase the number of facilities that participate in the existing headworks exemptions (and the greater possibility of using directly monitoring), EPA expects there would be both a reduction in some paperwork requirements (*i.e.*, preparation of hazardous waste manifests and Biennial Reports) and an increase in other paperwork requirements (*i.e.*, demonstrating compliance by using mass balance and submitting a one-time LDR notification under 40 CFR 268.7(a)(7)). Taking both proposed and existing RCRA requirements into account, EPA expects the proposed expansions would result in a bottom line total annual aggregate burden of approximately 19,315 hours and $15.1 million. This cost is expected to be offset by costs savings from reduced waste management costs (*see* section IV.B) with a net cost *savings* of $11.4–48.6 million. The net cost to EPA of administering the rule was estimated at approximately 942 hours and $39,250 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. For more information regarding the economic impact of this proposed rule, please refer to the economic background document to this proposal.

We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule directly affects primarily generators of hazardous wastewaters containing spent solvents, generators of scrubber waters derived from the incineration of spent solvents, and generators releasing *de minimis* amounts of listed wastes under certain conditions. There are no State and local government bodies that incur direct compliance costs by this rulemaking. State and local government implementation expenditures are expected to be less than $500,000 in any one year. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule reduces regulatory burden. It thus should not adversely affect energy supply, distribution or use.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule would allow facilities to demonstrate compliance using available and applicable sampling methods sufficient to establish compliance with the appropriate weekly standard.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: March 26, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.3 is amended by revising paragraphs (a)(2)(iv)(A), (B), (D), (F) and (G) to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene—*Provided,* That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative (''Director'' as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, and 2-ethoxyethanol—*Provided That* the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, OR the total measured concentration of these solvents entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative (''Director'' as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

* * * * *

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in §§ 261.31 through 261.33, arising from *de minimis* losses of these materials. For purposes of this paragraph (a)(2)(iv)(D), *de minimis* losses are unscheduled, uncontrollable, insignificant, and inadvertent releases to a wastewater treatment system, including those from normal material handling operations (*e.g.,* spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in §§ 261.31 through 261.32, or any non-manufacturing facility that claims an exemption for *de minimis* quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have a permit subject to the Clean Water Act that contains limits for, the constituents for which each waste was listed (in 40 CFR 261 appendix VII) of this part; and the constituents in the table ''Treatment Standards for Hazardous Wastes'' in 40 CFR 268.40 for which each waste has a treatment standard (*i.e.*, Land Disposal Restriction constituents); or

* * * * *

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—*Provided* that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, *i.e.*, what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative (''Director'' as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals

accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—*Provided,* that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Regional Administrator, or State Director, as the context requires, or an authorized representative (''Director'' as defined in 40 CFR 270.2). The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the sampling and analysis plan is rejected or if the Director finds that the facility is not following the sampling and analysis plan, the facility must no longer use the direct monitoring option until such time as the bases for rejection are corrected.

* * * * *

[FR Doc. 03–8154 Filed 4–7–03; 8:45 am]

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Federal Register

Tuesday,
April 8, 2003

Part IV

Department of Housing and Urban Development

Notice Concerning Release of Certain Loan-Level Data on Ginnie Mae Mortgage-Backed Securities; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4810–N–01]

Notice Concerning Release of Certain Loan-Level Data on Ginnie Mae Mortgage-Backed Securities

AGENCY: The Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: This proposed notice announces the intent of Ginnie Mae, a Government corporation within the Department of Housing and Urban Development (HUD), to make certain loan-level data available to the public on Ginnie Mae multifamily securities, and invites public comments on this policy. This notice also invites comments regarding the impact of releasing specific loan-level information.

DATES: *Comment due date:* May 8, 2003.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not accepted.

FOR FURTHER INFORMATION CONTACT: Paulette M. Griffin, Director, Multifamily Programs Division, Office of Mortgage-Backed Securities, Room 6216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2043 (this is not a toll free number). Speech-or hearing-impaired individuals may access this number via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (Ginnie Mae), a corporation that is wholly owned by the federal government, was created in 1968 to assist in the movement of funds from capital market investors to the housing market. Ginnie Mae guarantees the timely payment of principal and interest on single family, multifamily, and multiclass mortgage-backed securities issued by private institutions. The securities are backed by pools of mortgage loans that are insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, the Rural Housing Service, and the Secretary of Housing and Urban Development under section 184 of the Housing and Community Development Act of 1992.

In order to achieve a fair and open market in Ginnie Mae-guaranteed multifamily securities, the investing public, the securities industry, and issuers/servicers of those securities have asked Ginnie Mae to make delinquency information available to the public on the multifamily loans that back Ginnie Mae securities. Ginnie Mae proposes to make this information available to the public. Presently, issuers/servicers are free to disclose this information to the public, but there is no requirement that they do so. Some issuers/servicers disclose this information; others do not, and still other issuers/servicers selectively disclose the loan information. Unless this information is publicly available, investors may use less favorable assumptions when pricing multifamily Ginnie Mae securities. Making this multifamily loan information available to investors should lead to greater investor confidence and more accurate pricing on these securities. This could decrease the cost of borrowing to finance apartment buildings, and thus decrease the rents of low- and moderate-income families that live in those buildings.

The Department of Justice has advised HUD that, in the case of numerous information submitters, disclosure by an agency is permitted after publication of the agency's intent to release such information in a manner calculated to provide notice and afford affected parties an opportunity to comment. This procedure serves as notice to the public and provides an opportunity to comment. HUD first used this procedure in connection with disclosure of past note sale bids by publication in the **Federal Register** and the Commerce Business Daily. *See* 63 FR 36255 (July 2, 1998) and CBDNet Submission No. 230722 (July 30, 1998). Following this procedure, Ginnie Mae is publishing this notice of Ginnie Mae's intent to make this information available to the public.

Ginnie Mae invites interested persons to submit their comments regarding this proposed policy. Ginnie Mae is also interested in receiving comments from Ginnie Mae submitters and investors. Commenters are asked to provide Ginnie Mae with a detailed written statement of their objections, if any, to release of the information. Such statement shall specify all grounds for withholding the information and shall specifically demonstrate why the information is a trade secret or commercial or financial information that is privileged or confidential. If a commenter maintains that disclosure would cause competitive harm, for example, the statement should show that disclosure would reasonably be expected to cause such harm. Conclusory statements that the information would be useful to competitors or similar conclusory statements generally will not be considered sufficient to justify confidential treatment.

At the conclusion of the comment period, Ginnie Mae will consider all comments and determine whether further changes should be made to this policy as a result of the issues raised by commenters. A final Notice will be published in the **Federal Register** that, if necessary, will set forth changes to the policy announced in this Notice, or that will adopt this policy without change.

Ginnie Mae will also carefully consider comments and objections before determining whether to disclose specific delinquency information. If Ginnie Mae decides to disclose the information over the objections of a submitter, Ginnie Mae will advise the submitter in a written notice of its intent to disclose the information 10 business days before the specified disclosure date.

Authority: 12 U.S.C. 1721(g); 5 U.S.C. 552; 24 CFR 15.108(c); E.O. 12600.

Dated: March 31, 2003.

Ronald Rosenfeld,

President, Government National Mortgage Association.

[FR Doc. 03–8551 Filed 4–7–03; 8:45 am]

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